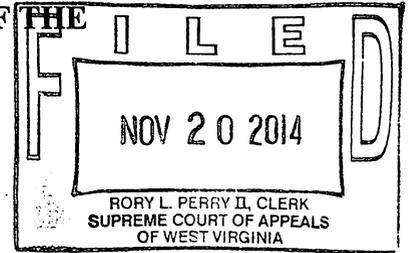


ARGUMENT
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BEFORE THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA



LAWYER DISCIPLINARY BOARD,

Complainant,

v.

No. 13-0522

APRIL D. CONNER,

Respondent.

BRIEF OF THE LAWYER DISCIPLINARY BOARD

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I. STATEMENT OF THE CASE

A. NATURE OF PROCEEDINGS AND RECOMMENDATION OF THE HEARING PANEL SUBCOMMITTEE

This is a disciplinary proceeding against Respondent April D. Conner (“Respondent”), arising as the result of a Statement of Charges issued against her and filed with the Supreme Court of Appeals of West Virginia (“Supreme Court”) on or about May 22, 2013. Respondent was served with the Statement of Charges on May 24, 2013, and filed a timely response thereto.

The Office of Disciplinary Counsel provided Respondent with its mandatory discovery on or about June 13, 2013. Respondent did not provide mandatory discovery and a “Motion to Exclude Testimony of Witnesses and Documentary Evidence and/or Testimony of Mitigating Factors” was filed on or about August 19, 2013. Respondent did not file an objection to the aforementioned Motion, and on September 11, 2013, the Hearing Panel Subcommittee entered an Order granting the Motion.

The matter then proceeded to hearing in Charleston, West Virginia, on November 21, 2013. Respondent appeared *pro se*. Joanne M. Vella Kirby, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. The Hearing Panel Subcommittee, comprised of Richard M. Yurko, Jr., Esquire, Chairperson, Sean Francisco, Esquire and Cynthia Pyles, laymember, presided over the proceedings.

The Hearing Panel Subcommittee heard testimony from Shawna Swiger, Nicholas Robey and Respondent, as well as the arguments of counsel. The Hearing Panel Subcommittee also admitted into evidence the Office of Disciplinary Counsel’s Exhibits 1-28. Respondent did not tender any exhibits.

On or about January 22, 2014, the Office of Disciplinary Counsel filed “Disciplinary Counsel’s Proposed Findings of Fact, Conclusions of Law and Recommended Sanctions.” The Office of Disciplinary Counsel recommended that the Hearing Panel Subcommittee recommend the following sanctions to the Supreme Court:

1. That Respondent’s law license be suspended for a period of thirty (30) days pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure. The Hearing Panel Subcommittee finds that suspension is the appropriate sanction for Respondent’s misconduct;
2. If she has not already done so, that Respondent be ordered to reimburse Shawna Swiger her \$2,000 retainer fee;
3. That following Respondent’s suspension, Respondent will sign and follow a plan of supervised practice for a period of two (2) years with a supervising attorney of Respondent’s choice, said supervisor to be approved by the Office of Disciplinary Counsel and be available to respond to inquires by the Office of Disciplinary Counsel; and
4. 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.

On or about January 29, 2014, Respondent filed “Respondent’s Proposed Findings of Fact, Conclusions of Law and Recommended Sanctions.” Respondent recommended that the Hearing Panel Subcommittee recommend the following sanctions to the Supreme Court:

1. That Respondent be reprimanded;

2. That Respondent be ordered to reimburse Shawna Swiger her \$2,000 retainer fee, which fee the Hearing Panel Subcommittee acknowledges proof of the same has been provided concurrent with the receipt of these proposed recommendations;¹
3. That Respondent will sign and follow a plan of supervised practice for a period of two (2) years with a supervising attorney of Respondent's choice, said supervisor to be approved by the Office of Disciplinary Counsel and be available to respond to inquires by the Office of Disciplinary Counsel; and
4. 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.

On or about September 2, 2014, the Hearing Panel Subcommittee issued its recommendation in this matter and filed with the Supreme Court its "Report and Recommendation of the Hearing Panel Subcommittee." The Hearing Panel Subcommittee properly found that the evidence established that Respondent violated Rules 1.2(a), 1.3, 1.4(a) and (b), 1.15(a), 1.16(d), 3.2, 8.1(b) and 8.4(d) of the Rules of Professional Conduct.

The Hearing Panel Subcommittee issued the following recommendation as the appropriate sanctions:

1. That Respondent's law license be suspended for a period of thirty (30) days pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure. The Hearing Panel

¹Attached to "Respondent's Proposed Findings of Fact, Conclusions of Law and Recommended Sanctions," Respondent provided a copy of correspondence dated January 29, 2014 from Respondent to Ms. Swiger, and a copy of a check to Ms. Swiger, in which Respondent returned Ms. Swiger's \$2,000 retainer fee.

Subcommittee finds that suspension is the appropriate sanction for Respondent's misconduct;

2. If she has not already done so, that Respondent be ordered to reimburse Shawna Swiger her \$2,000 retainer fee;
3. That following Respondent's suspension, Respondent will sign and follow a plan of supervised practice for a period of two (2) years with a supervising attorney of Respondent's choice, said supervision to be approved by the Office of Disciplinary Counsel and be available to respond to inquires by the Office of Disciplinary Counsel; and
4. 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.

B. FINDINGS OF FACT

Respondent is a lawyer practicing in West Union, Doddridge County, West Virginia,² and, as such, is subject to the disciplinary jurisdiction of the Supreme Court and its properly constituted Lawyer Disciplinary Board. Respondent was admitted to The West Virginia State Bar on September 30, 1996, after successful passage of the West Virginia Bar Examination.

1. Complaint of Nicholas Robey

Respondent was appointed to represent Complainant Nicholas Robey in a criminal matter. (Transcript at p. 29, lines 9-14, p. 72, lines 2-5; ODC Exhibit 1). On May 4, 2010, Mr. Robey was indicted and charged with felony murder, conspiracy to commit burglary, and grand larceny. (Transcript at p. 31, lines 2-13; ODC Exhibit 11).

²In July 2013, Respondent began working as an assistant prosecutor in the Doddridge County Prosecutor's Office. (Transcript at p. 62, lines 8-13). At all times relevant to the formal charges filed against Respondent, she practiced law in Clarksburg, Harrison County, West Virginia.

On August 5, 2010, in the Circuit Court of Harrison County, West Virginia, Mr. Robey pled guilty to the felony offense of felony murder. Pursuant to the terms of his plea agreement, the parties requested that the Court make a recommendation of mercy. The parties further acknowledged their understanding that the Court was not bound by the aforementioned recommendation. (Transcript at p. 31, lines 14-24, p. 32, lines 1-11, p. 74, lines 12-24, p. 75, lines 1-11; ODC Exhibits 10 and 11).

By order entered August 19, 2010, Circuit Judge James A. Matish ordered that a hearing would be held on November 10, 2010, at which time the Court would accept Mr. Robey's guilty plea and sentence him, or would schedule the matter for further proceedings. (ODC Exhibits 10 and 11). On or about November 4, 2010, the Court ordered that Mr. Robey's sentencing hearing would be continued from November 10, 2010 until February 17, 2011. Thereafter, on or about February 4, 2011, the Court again ordered that Mr. Robey's sentencing hearing would be continued, and rescheduled the hearing for April 6, 2011. On or about April 5, 2011, the Court once again continued Mr. Robey's sentencing hearing and rescheduled the same for May 19, 2011. (Transcript at p. 75, lines 17-24, p. 76, lines 1-5; ODC Exhibit 11).

On or about May 19, 2011, Mr. Robey appeared before the Court where he was questioned whether it was still his intent to enter a guilty plea to the felony murder count of the indictment.³ Mr. Robey maintained his guilty plea. (Transcript at p. 32, lines 20-24, p. 33, lines 1-6, p. 76, lines 6-12; ODC Exhibit 11).

By order entered June 1, 2011, Judge Bedell ordered that Mr. Robey's sentencing would take place on August 26, 2011. Thereafter, on July 27, 2011, Judge Matish entered a Transportation

³According to Respondent, Judge Matish had presided over the plea hearing that occurred on August 5, 2010. Due to a family emergency, however, Judge Matish left the state for a period of time. Judge Bedell covered the case in Judge Matish's absence, including the May 19, 2011 status hearing wherein Mr. Robey was questioned whether it remained his intent to plead guilty to felony murder. (Transcript at p. 45, lines 6-18, p. 76, lines 6-24, p. 77, lines 1-14).

Order, which changed Mr. Robey's sentencing date to August 2, 2011. (Transcript at p. 35, lines 1-15, p. 76, lines 13-24, p. 77, lines 1-19; ODC Exhibit 11).

On August 2, 2011, Mr. Robey appeared before the Court for his sentencing. Despite the parties' recommendation for mercy, the Court noted that it would not make a recommendation that Mr. Robey be considered for parole, and accordingly, sentenced Mr. Robey to life in prison. (Transcript at p. 33, lines 7-9, p. 35, lines 6-8, p. 36, lines 23-24, p. 37, line 1, p. 82, lines 1-6; ODC Exhibit 11).

On or about October 24, 2011, Mr. Robey filed a complaint with the Office of Disciplinary Counsel. Mr. Robey alleged that he and Respondent had agreed that she would appeal his sentence, and that she failed to do so.⁴ Mr. Robey further alleged that Respondent failed to communicate with him, or with his mother, despite repeated attempts to reach Respondent following his August 2, 2011 sentencing. Finally, Mr. Robey alleged that Respondent provided inadequate counsel by failing to comply with his requests during pre-sentencing, making no attempt to contact his family to participate in his sentencing hearing, and failing to appeal his sentence. (Transcript at p. 29, lines 1-8, p.35, lines 15-24, p. 36, lines 1-19, p. 37, lines 12-24, p.38, lines 1-24, p. 39, lines 1-24, p. 40, lines 1-24, p. 41, lines 1-16; ODC Exhibit 1).

By letter dated October 28, 2011, the Office of Disciplinary Counsel sent Respondent a copy of the Complaint and directed her to file a response within twenty (20) days. (Transcript at p. 83, lines 17-24, p. 84, lines 1-2; ODC Exhibit 2). After receiving no response, on or about December 12, 2011, the Office of Disciplinary Counsel sent a second letter by certified and first class mail

⁴Although in the Complaint, Mr. Robey alleged that he and Respondent had agreed that she would appeal his sentence, at the hearing, when asked if he told Respondent that he wished to appeal his sentence after having been sentenced, Mr. Robey testified "I can't remember." (Transcript at p. 37, lines 19-24, p. 38, line 1). Further, when asked if he told Respondent that he wanted to appeal, he stated "I think so." (Transcript at p. 40, lines 11-13). Complainant testified that he assumed that Respondent would appeal his sentence "because there was nothing I could lose by filing one." (Transcript at p. 39, lines 19-24, p. 40, lines 1-10).

directing Respondent to file a response by December 28, 2011, and advising her that her failure to do so could result in a subpoena being issued for her appearance at the Office of Disciplinary Counsel for a statement, or the allegations in the Complaint would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board. (Transcript at p. 84, lines 7-22; ODC Exhibit 3).

Thereafter, Respondent responded to Mr. Robey's Complaint by way of letter dated December 27, 2011, which was received by the Office of Disciplinary Counsel on December 29, 2011. (Transcript at p. 84, lines 23-24, p. 85, line 1; ODC Exhibit 4).

In response to the Complaint, Respondent maintained that she and Mr. Robey had discussed the subject of an appeal to whatever sentence Mr. Robey would receive both prior to his acceptance of the plea agreement and prior to his sentencing. Respondent maintained that at all times, "Mr. Robey expressed his understanding of [sic] that even if he received life without the recommendation of mercy, there would be no appeal." (Transcript at p. 85, lines 2-14, p. 138, lines 17-24, p. 139, lines 1-5; ODC Exhibit 4). At the hearing, however, Respondent acknowledged that pursuant to the language of the plea agreement, Mr. Robey could have appealed his sentence without violating the terms of the plea agreement, and that Mr. Robey testified that he wanted to appeal his sentence. (Transcript at p. 140, lines 11-24, p. 141, lines 1-24, p. 142, lines 1-24, p. 143, lines 1-12).

Additionally, Respondent maintained that she had inquired of Mr. Robey whether his mother would attend his sentencing hearing to speak on his behalf, and that Mr. Robey informed her that his mother "did not have enough notice to make arrangements to travel from North Carolina to attend the sentencing hearing." Moreover, Respondent maintained that Mr. Robey's father attended his sentencing hearing, but declined to address the Court, as he advised Respondent that he did not believe he could do so. (Transcript at p. 85, lines 15-22; ODC Exhibit 4).

Although Respondent denied that she failed to contact Mr. Robey or that she had inadequate communication with him throughout his case, Respondent testified that she did not see or speak with Mr. Robey any time after he was sentenced. Mr. Robey also testified that Respondent did not communicate with him at all after his sentencing, despite his attempts to contact her. (Transcript at p. 40, line 24, p. 41, lines 1-16, p. 85, lines 23-24, p. 86, lines 1-3, p. 138, lines 13-16; ODC Exhibit 4).

2. Complaint of the Office of Disciplinary Counsel

On or about April 28, 2006, a Doddridge County, West Virginia petit jury found Jonathan David Boatwright guilty of first degree sexual assault, sexual abuse by a custodian, and incest, which resulted in a sentence of 30-70 years total. (ODC Exhibit 12). On or about June 5, 2007, the Supreme Court denied Mr. Boatwright's direct appeal without opinion. (Id.) Upon denial of Mr. Boatwright's direct appeal, on or about April 7, 2008, he filed a Post Conviction Petition for *Writ of Habeas Corpus* and a Motion for Appointment of Counsel. (Id.)

Thereafter, on or about October 1, 2008, the Circuit Court of Doddridge County appointed Brian Carr to represent Mr. Boatwright with respect to his post conviction petition. Additionally, the Court ordered that leave would be granted to file a Supplemental Petition for Post-Conviction Relief, which was subsequently filed. (Id.) On or about July 15, 2011, the Circuit Court of Doddridge County refused Mr. Boatwright's post conviction petition. (Id.)

On or about August 11, 2011, Mr. Boatwright, *pro se*, filed a timely notice of appeal from the Circuit Court of Doddridge County's July 15, 2011 order. On or about that same date, Mr. Boatwright filed a Motion for Appointment of Counsel for Appeal to the Circuit Court. (Id.) Thereafter, on or about March 19, 2012, the Circuit Court of Doddridge County granted Mr.

Boatwright's Motion for Appointment of Counsel for Appeal, and appointed Respondent to represent him in his appeal for denial of *habeas corpus*. (Transcript at p. 95, lines 2-6; ODC Exhibit 12).

On or about April 23, 2012, the Supreme Court entered an Amended Scheduling Order⁵ that directed Respondent to perfect Mr. Boatwright's appeal on or before June 16, 2012. (Transcript at p. 95, lines 7-12; ODC Exhibit 12). When Respondent failed to perfect the appeal, on or about July 9, 2012, the Attorney General's Office of the State of West Virginia filed a Motion to Dismiss Mr. Boatwright's case. (Transcript at p. 95, lines 13-21; ODC Exhibit 12). Thereafter, on or about July 10, 2012, the Supreme Court, in vacation, refused the aforementioned Motion to Dismiss, and ordered Respondent to perfect Mr. Boatwright's appeal within ten days of her receipt of the Court's order, or the appeal would be subject to dismissal and other sanctions. (Transcript at p. 95, lines 22-24, p. 96, lines 1-6; ODC Exhibit 12).

Again, Respondent failed to perfect Mr. Boatwright's appeal. Accordingly, on or about September 6, 2012, the Supreme Court, on its own motion, proceeded to consider sanctions for Respondent's failure to perfect Mr. Boatwright's appeal, as ordered. The Supreme Court commanded and directed Respondent to appear before it on October 17, 2012 in order to show cause as to why she should not be held in contempt for her failure to perfect the appeal, unless sooner mooted by perfection of the appeal. (Transcript at p. 96, lines 7-24; ODC Exhibit 12).

By letter dated September 10, 2012, Clerk of Court Rory L. Perry II and Deputy Clerk of Court Edythe Nash Gaiser, at the direction of the Supreme Court, requested that the Office of Disciplinary Counsel consider opening a complaint against Respondent. (Transcript at p. 97, lines 1-7; ODC Exhibit 12). Accordingly, on or about September 18, 2012, pursuant to the Rule 2.4(a) of

⁵The Supreme Court had entered an initial Scheduling Order on or about August 18, 2011. The Amended Scheduling Order was entered following Mr. Boatwright's November 9, 2011 *pro se* Motion for Enlargement of Time to Appeal, which the Court granted. (ODC Exhibit 12).

the Rules of Lawyer Disciplinary Procedure, the Office of Disciplinary Counsel opened the instant Complaint against Respondent. Respondent's response was due on or about October 11, 2012. (Transcript at p. 97, lines 8-12; ODC Exhibit 13).

On or about October 12, 2012, Respondent telephoned the Office of Disciplinary Counsel and requested an extension of time to file a response to the September 18, 2012 letter, which was granted. Therefore, Respondent's response was due on or about October 22, 2012. (Transcript at p. 97, lines 13-21; ODC Exhibit 14).

Respondent failed to appear before the Supreme Court, as ordered, for the show cause hearing scheduled for October 17, 2012. (Transcript at p. 97, lines 22-24, p. 98, line 1; ODC Exhibit 15). Accordingly, on or about October 18, 2012, the Supreme Court entered an order wherein it found Respondent guilty of contempt of the Supreme Court by failing to perfect Mr. Boatwright's appeal and for failure to appear before the Supreme Court as ordered. The Supreme Court also held that Respondent could purge herself of contempt by properly perfecting the appeal within seven calendar days of her receipt of service of the October 18, 2012 order. The Supreme Court further ordered that Respondent be fined \$250.00 per day for each day that she continued to be in contempt for failure to perfect the appeal therein. (Transcript at p. 98, lines 2-15; ODC Exhibit 15).

After receiving no response to its September 18, 2012 correspondence, on or about October 24, 2012, the Office of Disciplinary Counsel sent a second letter by certified and first class mail directing Respondent to file a response by November 5, 2012, and advising her that her failure to do so could result in a subpoena being issued for her appearance at the Office of Disciplinary Counsel for a statement, or the allegations in the Complaint would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board. (Transcript at p. 98, lines 16-24, p. 99, lines 1-4; ODC Exhibit 16).

On or about October 25, 2012, Respondent filed Mr. Boatwright's Petition for Appeal and tendered a check in the amount of \$1,500.00, which represented the fine imposed by the Supreme Court as noted above. (Transcript at p. 99, lines 5-11; ODC Exhibit 17). Thereafter, on or about November 4, 2012, Respondent responded to the Complaint opened by the Office of Disciplinary Counsel. In her response, she stated that "while there are several explanations, there is truly no excuse for having [failed] to perfect the appeal on Mr. Boatwright's behalf in the time that passed." On her behalf, Respondent cited the fact that she is a solo practitioner working in multiple counties and has a busy case load, yet she acknowledged that "none of these things should have resulted in the missing of the deadlines in the *Boatwright* case as I did." Respondent concluded by apologizing, both to Mr. Boatwright and to the Supreme Court. (Transcript at p. 99, lines 12-24, p. 100, lines 1-2; ODC Exhibit 18).

In her sworn statement taken February 25, 2013, Respondent acknowledged that she had not had a conversation with Mr. Boatwright before she filed his appeal, and that there was "not one aspect of this case that [she] did not mismanage." Moreover, Respondent acknowledged that although she believed that she sent Mr. Boatwright copies of "everything," including "correspondence apologizing profusely to let him know what's going on and to let him know that his appeal was in fact perfected," she still had not spoken or met with Mr. Boatwright. (Transcript at p. 100, lines 3-24, p. 101, lines 1-14; ODC Exhibit 9).

In her response to the Complaint opened by the Office of Disciplinary Counsel and at the hearing, Respondent admitted all of the allegations concerning the Complaint as set forth in the Statement of Charges. (Transcript at p. 93, lines 5-12, p. 101, lines 15-24, p. 102, lines 1-20).

3. Complaint of Shawna Drum

Complainant Shawna S. Drum⁶ retained Respondent to represent her in a matter in the Harrison County Family Court in Harrison County, West Virginia. When the Family Court did not rule in Ms. Swiger's favor, Respondent appealed the judge's ruling to the Circuit Court of Harrison County, which affirmed the decision of the Family Court. (Transcript at p. 8, lines 22-24, p. 9, lines 1-13, p. 103, lines 12-24, p. 104, lines 1-3; ODC Exhibit 22).

Ms. Swiger subsequently retained Respondent again to file another matter in the Harrison County Family Court in or about January of 2012.⁷ Ms. Swiger paid Respondent her requested \$2,000.00 retainer fee. At the hearing, Respondent testified that she did not deposit the aforementioned retainer fee into an IOLTA account, but rather deposited the retainer fee into her "regular business account for the firm." (Transcript at p. 9, lines 17-24, p. 10, lines 1-24, p. 11, lines 1-24, p. 12, lines 1-17, p. 104, lines 4-24, p. 105, lines 1-10, p. 108, lines 5-10, p. 119, lines 17-24, p. 120, lines 1-6; ODC Exhibit 22).

At the hearing, Ms. Swiger testified that the only communication she had with Respondent during the second representation was when Respondent sent Ms. Swiger an e-mail message asking her certain questions, to which Ms. Swiger responded. Ms. Swiger testified that she never heard from Respondent again. Further, Respondent never filed a new petition for relocation on Ms. Swiger's behalf. At the hearing, Respondent testified that she disputed Ms. Swiger's testimony regarding their communication during the second representation, and further testified that she and Ms. Swiger discussed the case approximately twice on the telephone and approximately two to three times in

⁶Complainant's name is now Shawna Swiger. (Transcript at p. 8, lines 1-3).

⁷Respondent had initially filed a petition for relocation on Complainant's behalf at a time when Complainant was engaged to be married. When Complainant married, she chose to file a new petition for relocation based on a change of circumstance. (Transcript at p. 9, lines 17-22, p. 12, lines 18-24, p. 13, lines 1-6, p. 25, lines 8-14, p. 103, lines 3-11; ODC Exhibit 22).

person. Respondent acknowledged that she did not provide any proof of such alleged communication to the Office of Disciplinary Counsel. Ms. Swiger ultimately discharged Respondent's services in or about April of 2012. (Transcript at p. 14, lines 7-24, p. 15, lines 1-24, p. 16, lines 1-24, p. 17, lines 1-15, p. 20, lines 19-24, p. 21, lines 1-24, p. 22, lines 1-4, p. 23, lines 13-15, p. 108, lines 11-24, pp. 109-117, lines 1-24, p. 118, lines 1-23; ODC Exhibit 22).

Ms. Swiger requested a refund of Respondent's unearned retainer fee. Respondent failed to respond to Ms. Swiger's request. (Transcript at p. 17, lines 10-20, p. 18, lines 13-15, p. 118, line 24, p. 119, lines 1-16, p. 121, lines 23-24, p. 122, lines 1-16; ODC Exhibit 22). Thereafter, Ms. Swiger retained new counsel, Linda Hausman, who contacted Respondent and requested that Respondent return Ms. Swiger's retainer fee. Respondent testified that although she and Ms. Hausman had discussed Respondent returning Ms. Swiger's retainer fee, Respondent had not yet done so. Respondent noted that she had brought with her, to the hearing, a certified check in the amount of \$2,000, which she intended to send to Ms. Swiger via mail. (Transcript at p. 17, lines 21-24, p. 18, lines 1-15, p. 23, lines 16-24, p. 24, lines 1-10, p. 120, lines 22-24, p. 121, lines 1-24, p. 122, lines 1-16; ODC Exhibit 22).

Ms. Swiger filed the instant Complaint against Respondent on or about October 15, 2012. (Transcript at p. 8, lines 17-21, p. 122, lines 17-21; ODC Exhibit 22). By letter dated October 24, 2012, the Office of Disciplinary Counsel sent Respondent a copy of the Complaint and directed her to file a response within twenty (20) days. (Transcript at p. 122, lines 22-24, p. 123, lines 1-3; ODC Exhibit 23). After receiving no response, on or about November 14, 2012, the Office of Disciplinary Counsel sent a second letter by certified and first class mail directing Respondent to file a response by November 26, 2012, and that her failure to do so could result in a subpoena being issued for her appearance at the Office of Disciplinary Counsel for a statement, or the allegations in the Complaint

would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board. (Transcript at p. 123, lines 4-13; ODC Exhibit 25).

Once again, Respondent failed to file a verified response to the Complaint. (Transcript at p. 123, lines 14-16). Accordingly, a subpoena was issued for Respondent's appearance at the Office of Disciplinary Counsel for her sworn statement to be taken on January 22, 2013. (Transcript at p. 123, lines 17-21; ODC Exhibit 26).

On January 22, 2013, Respondent contacted the Office of Disciplinary Counsel via telephone and stated that she would not be able to attend her sworn statement because she was detained while working on multi-disciplinary treatment meetings for clients' abuse and neglect proceedings. Respondent failed to provide the Office of Disciplinary Counsel with the requested verification of such proceedings. (Transcript at p. 123, lines 22-24, p. 124, lines 1-18; ODC Exhibit 27).

At the hearing, Respondent admitted the allegations that she violated Rule 8.1(b) of the Rules of Professional Conduct, as contained in the Complaint and as set forth in the Statement of Charges. Moreover, Respondent acknowledged that she had never filed a response to Ms. Swiger's Complaint. (Transcript at p. 124, lines 19-24, p. 125, lines 1-14).

C. CONCLUSIONS OF LAW

The Hearing Panel Subcommittee made several conclusions of law as to violations of the Rules of Professional Conduct. The conclusions of law were based upon the record presented and are supported by the clear and convincing standard.

1. Complaint of Nicholas Robey

Citing Turner v. Haynes, the Hearing Panel Subcommittee noted that the Supreme Court held that indigent criminal defendants have a right to appeal convictions, and further held that "[t]he obligation of a court-appointed attorney to his client is not discharged merely by his informing such

client of his determination that an appeal is without merit and frivolous; it is the appellate court, not counsel, after a full examination of all the proceedings, which makes that determination.” Syl. pt. 3, Turner v. Haynes, 162 W.Va. 33, 245 S.E.2d 629 (1978).

The Hearing Panel Subcommittee found that because Respondent failed to abide by Mr. Robey’s decisions concerning the objectives of representation in this matter, in that she failed to appeal his sentence, Respondent violated Rule 1.2(a) of the Rules of Professional Conduct, which states:

Rule 1.2. Scope of representation.

(a) A lawyer shall abide by a client’s decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client’s decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

The Hearing Panel Subcommittee additionally found that because she failed to appeal Mr. Robey’s sentence, Respondent violated Rule 1.3 of the Rules of Professional Conduct, which states:

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

Furthermore, the Hearing Panel Subcommittee found that because Respondent failed to keep Mr. Robey informed as to the status of his case, and failed to respond to his attempts to communicate with her following his sentencing hearing, Respondent violated Rules 1.4(a) and 1.4(b) of the Rules of Professional Conduct, which state as follows:

Rule 1.4. Communication.

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

2. Complaint of the Office of Disciplinary Counsel

The Hearing Panel Subcommittee found that because Respondent failed to meet numerous deadlines established by the Supreme Court in order to perfect Mr. Boatwright's appeal, Respondent violated Rules 1.3 and 3.2 of the Rules of Professional Conduct, which state:

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

and

Rule 3.2. Expediting Litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

Furthermore, the Hearing Panel Subcommittee found that because Respondent failed to keep Mr. Boatwright informed as to the status of his appeal, Respondent violated Rule 1.4(a) of the Rules of Professional Conduct, which provides as follows:

Rule 1.4. Communication.

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Finally, the Hearing Panel Subcommittee found that because Respondent failed to appear before the Supreme Court, as ordered, for the show cause hearing scheduled for October 17, 2012, Respondent violated Rule 8.4(d) of the Rules of Professional Conduct, which provides as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice.

3. Complaint of Shawna Drum

The Hearing Panel Subcommittee found that because Respondent failed to communicate with her client, Respondent violated Rule 1.4 (a) of the Rules of Professional Conduct, which states:

Rule 1.4. Communication.

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

The Hearing Panel Subcommittee further found because Respondent agreed to perform certain legal services on behalf of Ms. Swiger, but failed to complete the same, and failed to return an unearned fee after being discharged, despite repeated requests for the same, Respondent violated Rule 1.16(d) of the Rules of Professional Conduct, which states:

Rule 1.16. Declining or terminating representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Moreover, the Hearing Panel Subcommittee found that because Respondent failed to deposit the retainer fee she received from Ms. Swiger into her IOLTA account, she violated Rule 1.15(a) of the Rules of Professional Conduct, which states:

Rule 1.15. Safekeeping property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated as a "client's trust account" in an institution whose accounts are federally insured and maintained in the state where the lawyer's office is situated, or in a separate account

elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safe guarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Finally, the Hearing Panel Subcommittee found that because Respondent failed to comply with the Office of Disciplinary Counsel's lawful requests for information, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct, which states:

Rule 8.1. Bar admission and disciplinary matters.

[A] lawyer . . . in connection with a disciplinary matter, shall not:

(b) . . . knowingly fail to respond to a lawful demand for information from . . . disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

II. SUMMARY OF ARGUMENT

The Supreme 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, 144, 451 S.E.2d 440, 445 (1994) (internal citations omitted). The evidence in the record supports the Hearing Panel Subcommittee's findings of fact and, as such, the factual findings are to be given substantial deference by this Honorable Court. The Hearing Panel Subcommittee appropriately concluded that Respondent violated Rules 1.2(a), 1.3, 1.4(a) and (b), 1.15(a), 1.16(d), 3.2, 8.1(b) and 8.4(d) of the Rules of Professional Conduct.

Therefore, in order to effectuate the goals of the disciplinary process, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board recommended that Respondent's law license be suspended for a period of thirty (30) days pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary

Procedure, as the Hearing Panel Subcommittee found that suspension is the appropriate sanction for Respondent's misconduct; if she has not already done so, Respondent shall be ordered to reimburse Ms. Swiger her \$2,000 retainer fee; following her suspension, Respondent shall sign and follow a plan of supervised practice for a period of two (2) years with a supervising attorney of Respondent's choice, said supervision to be approved by the Office of Disciplinary Counsel and Respondent shall be available to respond to inquires by the Office of Disciplinary Counsel; and Respondent shall 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 sanctions recommended by the Hearing Panel Subcommittee are appropriate in this case.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

On September 4, 2014, the Office of Disciplinary Counsel filed its statement of no objection to the Hearing Panel Subcommittee recommendation. On September 29, 2014, Respondent filed her statement of no objection to the Hearing Panel Subcommittee recommendation. On October 15, 2014, this Honorable Court rejected the recommendation of the Hearing Panel Subcommittee and set this matter for briefing. Additionally, this Honorable Court ordered that this matter shall be scheduled for oral argument and consideration by the Court under Rule 19 of the Revised Rules of Appellate Procedure, to be held on a later date during the January 2015 Term of Court.

IV. ARGUMENT

A. STANDARD OF PROOF

The charges against an attorney must be proven by clear and convincing evidence pursuant to Rule 3.7 of the Rules of Lawyer Disciplinary Procedure. Syl. pt. 1, Lawyer Disciplinary Board v.

McGraw, 194 W.Va. 788, 461 S.E.2d 850 (1995). The evidence presented in this case satisfies the clear and convincing standard.

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. Syl. pt. 3, Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 452 S.E.2d 377 (1994). The Supreme Court 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. Id. Substantial deference is to be given to the Lawyer Disciplinary Board’s findings of fact unless the findings are not supported by reliable, probative, and substantial evidence on the whole record. Id.

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].” McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381. The Supreme Court 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. Syl. pt. 3, Committee on Legal Ethics v. Blair, 174 W.Va. 494, 327 S.E.2d 671 (1984); syl. pt. 7, Committee on Legal Ethics v. Karl, 192 W.Va. 23, 449 S.E.2d 277 (1994).

B. ANALYSIS OF SANCTION UNDER RULE 3.16 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE

Syllabus Point 4 of Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d. 722 (1998) holds: 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 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. A review of the record in this matter indicates that Respondent has transgressed all four factors set forth in Jordan.

1. Respondent violated duties to her clients, to the public, to the legal system and to the legal profession.

Lawyers owe duties of candor, loyalty, diligence and honesty to their clients. Members of the public should be able to rely on lawyers to protect their property, liberty, and their lives. Lawyers are officers of the court, and as such, must operate within the bounds of the law and abide by the rules of procedure which govern the administration of justice in our state. Furthermore, a lawyer's duties also include maintaining the integrity of the profession.

The evidence in this case establishes by clear and convincing proof that Respondent has violated several duties owed to her clients. Respondent violated duties owed to Mr. Robey in that she failed to appeal his sentence, and thus, failed to abide by his decisions concerning the objectives of representation and failed to act with reasonable diligence and promptness in representing him. Respondent also violated her duty of communication with Mr. Robey because she failed to keep him informed as to the status of his case, and failed to respond to his attempts to communicate with her following his sentencing hearing.

Respondent violated duties owed to Mr. Boatwright when she failed to meet numerous deadlines established by the Supreme Court of Appeals of West Virginia in order to perfect his appeal, including her duty to act with reasonable diligence and promptness in representing Mr. Boatwright and her duty to make reasonable efforts to expedite litigation consistent with Mr. Boatwright's interests in perfecting his appeal. Additionally, Respondent violated duties owed to the

public, the legal system and the profession when she failed to appear before the Supreme Court, as ordered, for the show cause hearing scheduled for October 17, 2012. Respondent's failure to appear before the Supreme Court demonstrated professional misconduct in that she engaged in conduct that is prejudicial to the administration of justice.

Respondent violated duties owed to Ms. Swiger in that she failed to communicate with her client, and therefore, she failed to keep Ms. Swiger reasonably informed about the status of her case and promptly comply with reasonable requests for information. Additionally, Respondent violated duties owed to Ms. Swiger in that she agreed to perform certain legal services on Ms. Swiger's behalf, and not only failed to do so, but also failed to return an unearned fee after being discharged by Ms. Swiger, despite repeated requests for the same. Furthermore, Respondent violated duties owed to Ms. Swiger when she failed to deposit Ms. Swiger's retainer fee into her IOLTA account, as she was required to do so. Finally, Respondent violated duties owed to the legal system and the profession when she failed to comply with the Office of Disciplinary Counsel's lawful requests for information during the course of her disciplinary matter.

2. At a minimum, Respondent acted negligently.

"Negligence" as defined by the American Bar Association is "the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *ABA Model Standards for Imposing Lawyer Sanctions*, Definitions (1992).

As previously noted, Respondent admitted all of the allegations as set forth in the Statement of Charges concerning the Complaint the Office of Disciplinary Counsel filed in the Boatwright

matter, as well as the allegation that she violated Rule 8.1(b) of the Rules of Professional Conduct, as contained in the Complaint Ms. Swiger filed.

As to the remaining allegations, the evidence in this case establishes by clear and convincing proof that Respondent acted negligently in her representation of her clients, Mr. Robey, Mr. Boatwright and Ms. Swiger.

3. The amount of real injury was great.

As a result of Respondent's actions, both Mr. Robey and Mr. Boatwright's appeals were delayed. Additionally, as of the date of the hearing, almost two years after the representation commenced, Respondent had not returned Ms. Swiger's retainer fee, despite repeated requests to do so both by Ms. Swiger and her attorney, Ms. Hausman. In addition, Respondent's conduct has brought the legal system and legal profession into disrepute.

4. There are few mitigating factors, but several aggravating factors present.

In Lawyer Disciplinary Board v. Scott, the Supreme Court adopted mitigating factors in a lawyer disciplinary proceeding and stated that mitigating factors "are any considerations or factors that may justify a reduction in the degree of discipline to be imposed." Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 214, 579 S.E. 2d 550, 555 (2003) (*quoting ABA Model Standards for Imposing Lawyer Sanctions*, § 9.31). In this case, the Hearing Panel Subcommittee found that Respondent has demonstrated remorse to the Office of Disciplinary Counsel and the Hearing Panel Subcommittee, which is a mitigating factor.

Aggravating factors are considerations enumerated under Rule 3.16 of the Rules of Lawyer Disciplinary Procedure for the Court to examine when considering the imposition of sanctions. Elaborating on this rule, the Scott Court held "that aggravating factors in a lawyer disciplinary

proceeding ‘are any considerations, or factors that may justify an increase in the degree of discipline to be imposed.’” Scott, 213 W.Va. at 216, 579 S.E. 2d at 557 (quoting *ABA Model Standards for Imposing Lawyer Sanctions*, § 9.21).

Rule 9.22(c) of the *ABA Model Standards for Imposing Lawyer Sanctions* indicates that a pattern of misconduct constitutes an aggravating factor. In this case, the Hearing Panel Subcommittee found that Respondent has substantial experience in the practice of law. Moreover, the Hearing Panel Subcommittee found that Respondent has exhibited a pattern and practice of misconduct by failing to communicate with her clients and failing to diligently pursue cases on behalf of clients. This pattern and practice is exhibited in the cases charged in this Statement of Charges, and in a prior Statement of Charges filed against Respondent, which resulted in the Supreme Court reprimanding Respondent, among other sanctions, by Order entered October 27, 2010. (ODC Exhibit 28).

C. SANCTION

Rule 3.15 of the Rules of Lawyer Disciplinary Procedure provides that the following sanctions may be imposed in a disciplinary proceeding: (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.

The principle purpose of attorney disciplinary proceedings is to safeguard the public’s interest in the administration of justice. Syl. pt. 3, Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); Syl. pt. 2, Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syl. pt. 3, *in part*, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984); *cited in* Committee on Legal Ethics v. Morton, 186 W.Va. 43, 45, 410 S.E.2d 279, 281 (1991). The Supreme Court has consistently held:

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.

Syl. pt. 3, Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987); Syl. pt. 2, Committee on Legal Ethics v. White, 189 W.Va. 135, 428 S.E.2d 556 (1993); Syl. pt. 5, Committee on Legal Ethics v. Roark, 181 W.Va. 260, 382 S.E.2d 313 (1989); Syl. pt. 3, Lawyer Disciplinary Board v. Friend, 200 W.Va. 368, 489 S.E.2d 750 (1997); Syl. pt. 3, Lawyer Disciplinary Board v. Keenan, 208 W.Va. 645, 542 S.E.2d 466 (2000).

In the instant matter, the evidence establishes by clear and convincing proof that Respondent has violated the Rules of Professional Conduct by failing to appeal Mr. Robey's sentence as he desired, by failing to act diligently in her representation of Mr. Robey, by failing to keep Mr. Robey informed as to the status of his case and by failing to respond to Mr. Robey's attempts to communicate with her. Additionally, the evidence establishes by clear and convincing proof that Respondent has violated the Rules of Professional Conduct by not acting diligently and by not expediting litigation in her failure to meet numerous deadlines established by the Supreme Court in order to perfect Mr. Boatwright's appeal, by failing to keep Mr. Boatwright informed as to the status of his appeal and by engaging in conduct that is prejudicial to the administration of justice due to Respondent's failure to appear before the Supreme Court, as ordered, for the show cause hearing

scheduled for October 17, 2012. Finally, the evidence establishes by clear and convincing proof that Respondent has violated the Rules of Professional Conduct by failing to communicate with Ms. Swiger, by failing to return an unearned fee after having been discharged, by failing to deposit Ms. Swiger's retainer fee into Respondent's IOLTA account and by failing to comply with the Office of Disciplinary Counsel's lawful requests for information.

For the public to have confidence in our disciplinary and legal systems, lawyers who engage in the type of conduct exhibited by Respondent must be removed from the practice of law for some period of time. A license to practice law is a revokable privilege and when such privilege is abused, the privilege should be revoked. Such sanction is also necessary to deter other lawyers from engaging in similar conduct and to restore the faith of the victims in this case and of the general public in the integrity of the legal profession.

The American Bar Association has recognized that suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *ABA Model Standards for Imposing Lawyer Sanctions*, § 4.42. Additionally, suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. *Id.* at § 6.22. Finally, suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. *Id.* at § 8.2.

In Lawyer Disciplinary Board v. John P. Sullivan, 230 W. Va. 460, 740 S.E.2d 55 (2013), the respondent's license to practice law was suspended for a period of thirty (30) days and supervised practice was ordered by the Supreme Court for conduct involving lack of diligence, lack of

communication and failure to respond to disciplinary counsel. In Sullivan, the respondent failed to communicate with and assist his client in correcting a criminal sentencing order, and failed to respond to lawful requests for information by the Office of Disciplinary Counsel. Id., 740 S.E.2d at 56. The Hearing Panel Subcommittee recommended a number of sanctions, including that the respondent be reprimanded. Id.

Citing the respondent's previous history of being admonished, on five separate occasions, for similar conduct, the Supreme Court found that "[b]ased upon the record as a whole, there is no evidence that a sixth admonishment, even in the heightened form of a public reprimand, would appropriately sanction the respondent attorney, or that it would serve as an effective deterrent to other members of the Bar or maintain public confidence in the ethical standards of the legal profession." Id., 740 S.E.2d at 58. Accordingly, the Supreme Court held that the respondent's conduct warranted "a suspension from the practice of law and other sanctions, and that such sanctions are consistent with those imposed in other cases involving, in part or whole, conduct similar to that at issue in this case." Id., 740 S.E.2d at 58-59 (*citing* Lawyer Disciplinary Board v. Simmons, 219 W.Va. 223, 632 S.E.2d 909 (2006) (twenty-day suspension was warranted where respondent lawyer violated Rules 1.3 and 1.4 of the Rules of Professional Conduct by failing to timely communicate with clients and keep clients informed about the status of their matters)).

After the Hearing Panel Subcommittee issued its recommendation in this matter and filed with the Supreme Court its "Report and Recommendation of the Hearing Panel Subcommittee," on September 18, 2014, the Supreme Court entered its Order in Lawyer Disciplinary Board v. Richard W. Hollandsworth, No. 14-0022 (WV 9/18/14) (unreported case). In Hollandsworth, the Supreme Court concurred with the Hearing Panel Subcommittee's recommendation that the respondent receive a number of sanctions, including that the respondent be suspended from the practice of law for a period of ninety (90) days. The respondent failed to abide by his duties of diligence and

communication owed to his client pursuant to the Rules of Professional Conduct when he neglected to pursue his client's Petition for Writ of *Habeas Corpus*, neglected to keep his client reasonably informed about the status of the matter, neglected to promptly comply with his client's reasonable requests for information and neglected to provide his client with sufficient information about his matter so that his client could make informed decisions. Additionally, the respondent failed to comply with the Circuit Court's instructions to communicate with his client. Finally, the respondent engaged in conduct prejudicial to the administration of justice by failing in his responsibilities to his client.

As was the case in both Sullivan and Hollandsworth, Respondent has substantial experience in the practice of law and has exhibited a pattern and practice of misconduct by failing to communicate with her clients and failing to diligently pursue cases on behalf of clients. Lawyer Disciplinary Board v. April D. Conner, No. 35434 (WV 10/27/10) (unreported case). Similar to respondent Hollandsworth, at the time the instant complaints were filed, Respondent was engaged in the practice of law as a sole practitioner. Similar to respondent Sullivan, however, Respondent presently practices law in the public service arena, as she is employed as an Assistant Prosecuting Attorney, and therefore, most likely, has a greater support system in her daily practice.

Unlike respondent Hollandsworth, Respondent ultimately perfected Mr. Boatwright's appeal, having done so after this Honorable Court found her in contempt of the Supreme Court for failing to perfect the appeal and failing to appear before the Supreme Court as ordered. Additionally, Respondent was fined \$250.00 per day each day she was in contempt, for a total of \$1,500.00, which she paid to the Supreme Court as previously discussed. Furthermore, unlike respondent Sullivan and respondent Hollandsworth, Respondent's prior discipline resulted in a reprimand by this Honorable Court. Respondent Sullivan and respondent Hollandsworth had not received a prior reprimand by

the Supreme Court, but rather had been admonished by the Investigative Panel of the Lawyer Disciplinary Board, multiple times each.

A review of the record clearly indicates that the Hearing Panel Subcommittee properly considered the evidence and made an appropriate recommendation to this Court. Respondent, a lawyer with considerable experience, has demonstrated conduct which has fallen below the minimum standard for attorneys, and discipline must be imposed. The Office of Disciplinary Counsel is mindful of the Supreme Court's concern regarding the imposition of short suspensions, as expressed in Lawyer Disciplinary Board v. Simmons, 219 W.Va. at 228, n.3, 632 S.E.2d at 914 (noting that while it approved of the twenty-day suspension in Simmons, the Supreme Court expressed concern with the imposition of short suspensions in disciplinary cases as "short suspensions may do more harm than good, especially where a lawyer is a sole practitioner intending to continue in the practice of law"). Notwithstanding the foregoing, the Office of Disciplinary Counsel submits that the Hearing Panel Subcommittee's recommendation is appropriate. Respondent is no longer a sole practitioner, but rather is an Assistant Prosecuting Attorney. As such, there is a greater likelihood that Respondent has a greater support system in her daily practice and a lesser likelihood that her client, the State of West Virginia, will be left without representation, as would likely be the case if Respondent remained a sole practitioner. Accordingly, the Office of Disciplinary Counsel submits that the Hearing Panel Subcommittee's recommendation is appropriate.

V. CONCLUSION

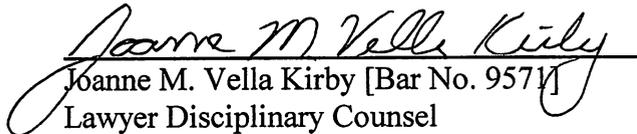
In reaching its recommendation as to sanctions, the Hearing Panel Subcommittee considered the evidence, the facts and recommended sanction and the aggravating factors and mitigating factors. For the reasons set forth above, the Hearing Panel Subcommittee recommended the following sanctions:

1. That Respondent's law license be suspended for a period of thirty (30) days pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure. The Hearing Panel Subcommittee finds that suspension is the appropriate sanction for Respondent's misconduct;
2. If she has not already done so, that Respondent be ordered to reimburse Shawna Swiger her \$2,000 retainer fee;⁸
3. That following Respondent's suspension, Respondent will sign and follow a plan of supervised practice for a period of two (2) years with a supervising attorney of Respondent's choice, said supervision to be approved by the Office of Disciplinary Counsel and be available to respond to inquiries by the Office of Disciplinary Counsel; and
4. 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.

Accordingly, the Office of Disciplinary Counsel urges that this Honorable Court uphold the sanctions recommended by the Hearing Panel Subcommittee and to which the Office of Disciplinary Counsel and Respondent consented.

⁸As previously noted, attached to "Respondent's Proposed Findings of Fact, Conclusions of Law and Recommended Sanctions," Respondent provided a copy of correspondence dated January 29, 2014 from Respondent to Ms. Swiger, and a copy of a check to Ms. Swiger, in which Respondent returned Ms. Swiger's \$2,000 retainer fee. Based on the foregoing, the Office of Disciplinary Counsel understands that Respondent has reimbursed Ms. Swiger her \$2,000 retainer fee.

Respectfully submitted,
The Lawyer Disciplinary Board
By Counsel


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CERTIFICATE OF SERVICE

This is to certify that I, Joanne M. Vella Kirby, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 20th day of November, 2014, served a true copy of the foregoing "**Brief of the Lawyer Disciplinary Board**" upon April D. Conner, Esquire, Respondent, by mailing the same via United States Mail with sufficient postage, to the following address:

April D. Conner, Esquire
Post Office Box 125
West Union, West Virginia 26456


Joanne M. Vella Kirby