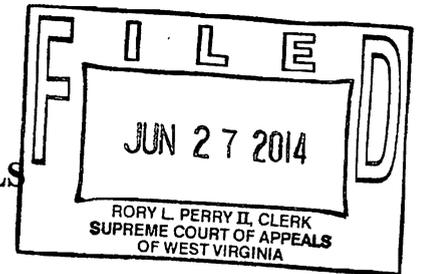


BEFORE THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA



In Re: RONALD S. ROSSI, a member of
The West Virginia State Bar

Bar No.: 7544
Supreme Court No.: 13-1148
I.D. No.: 13-05-342

REPORT OF THE HEARING PANEL SUBCOMMITTEE

I. PROCEDURAL HISTORY

Formal charges were filed against Respondent Ronald S. Rossi with the Clerk of the Supreme Court of Appeals on or about November 14, 2013, and served upon Respondent via certified mail by the Clerk on November 19, 2013. Disciplinary Counsel filed her mandatory discovery on or about December 5, 2013. Respondent filed his Answer to the Statement of Charges on or about December 20, 2013, but did not file any discovery.

Thereafter, this matter proceeded to hearing in Martinsburg, West Virginia, on February 6, 2014. The Hearing Panel Subcommittee was comprised of Paul T. Camilletti, Esquire, Chairperson, John W. Cooper, Esquire, and Cynthia L. Pyles, layperson. Jessica H. Donahue Rhodes, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. Respondent appeared *pro se*. The Hearing Panel Subcommittee heard testimony from Glen R. Davis, Jr., and Respondent. In addition, ODC Exhibits 1-4 were admitted into evidence.

Based upon the evidence and the record, the Hearing Panel Subcommittee of the

Lawyer Disciplinary Board hereby makes the following Findings of Fact, Conclusions of Law and Recommended Sanctions regarding the final disposition of this matter.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Ronald S. Rossi (hereinafter “Respondent”) is a lawyer practicing in Martinsburg, which is located in Berkeley County, West Virginia. Hrg. Trans. p. 203. Respondent was admitted to The West Virginia State Bar on October 15, 1997, after passing the bar exam. Hrg. Trans. p. 202. As such, Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.¹

COUNT I

I.D. No. 13-05-342

Complaint of Glenn R. Davis

2. Complainant Glenn R. Davis is the Chief Executive Officer for Comverge, a telecommunications firm located in Virginia Beach, Virginia. ODC Ex. 1, bates stamp 2. Comverge was named as a co-defendant in a lawsuit entitled *CSC Leasing Company v. 201 North George Street, LLC v. Comverge*, in the Jefferson County, West Virginia Circuit Court Civil Action No. 10-C-451. ODC Ex. 4, bates stamp 33-38.
3. On or about November 29, 2011, 201 North George Street, LLC filed an Amended

¹ Respondent is facing another Statement of Charges (W.Va. Supreme Ct. No. 13-0508) filed on May 20, 2013, which is currently pending before the Hearing Panel Subcommittee. A hearing in that matter occurred at the same time as the hearing in this matter.

Counterclaim and Third Party Complaint against Comverge. Id.

4. On or about December 7, 2011, Comverge was served with the Amended Counterclaim and Third Party Complaint by filing with the West Virginia Secretary of State's office. ODC Ex. 4, bates stamp 72-76. Complainant believed there was no legal basis for Comverge to be named as a party. ODC Ex. 1, bates stamp 2.
5. On or about February 22, 2012, Comverge retained Respondent and paid Respondent One Thousand Five Hundred Dollar (\$1,500.00) retainer on or about the same date. ODC Ex. 1, bates stamp 2, 16.
6. After retaining Respondent, Complainant had numerous phone calls and correspondence between him and Respondent about the matter and what action would be taken on behalf of Comverge. ODC Ex. 1, bates stamp 2, 7-8, 14-15. Complainant was told by Respondent that Respondent would file a Motion to Dismiss. ODC Ex. 1, bates stamp 2. Complainant personally called Respondent for updates on the matter multiple times a week, and Respondent would provide a brief summary. Id.
7. On or about April 24, 2012, a Motion for Default Judgment was filed by 201 N. George Street against Comverge. ODC Ex. 4, bates stamp 66-78.
8. On or about April 25, 2012, a Judgment Order was entered by the Jefferson County Circuit Court. ODC Ex. 4, bates stamp 80-81. The Order stated

“Comverge, Inc. has not appeared, or filed a Responsive Pleading or filed an Answer or in any other manner appeared to defend this matter and accordingly it is hereby ADJUDGED and ORDERED that all matters alleged in the Amended Counterclaim and Third Party Complaint asserted by 201 N. George Street, LLC against Comverge, Inc. are hereby considered fully proven and taken to be true for purposes of this Civil Action and it is hereby ORDERED that 201 N. George Street, LLC is hereby granted Judgment against Comverge, Inc. in the amount of \$30,000.00 plus pre and post judgment interest from the date of service of process and all expenses, attorney’s fees and costs expended herein or in the amount recovered, if any by CSC Leasing Company against 201 N. George Street, LLC, whichever is greater.” Id.

9. Complainant attempted to contact Respondent after April 25, 2012, and was only able to reach Respondent on one occasion during the week of May 7, 2012. ODC Ex. 1, bates stamp 2. Respondent informed Complainant’s assistant that Respondent had been traveling but Respondent was going to look into the summary judgment and would call them back the next day. Id. Respondent failed to contact Complainant and there has been no response from Respondent in the many attempts to contact him after that. Id.
10. Complainant contacted the Jefferson County Circuit Clerk’s office and was informed that there had not been any motions filed by Respondent on behalf of

Comverge. Id. Respondent made no appearance of counsel in the matter. Id.

11. On or about May 12, 2012, Complainant sent a letter to the Jefferson County Circuit Court about the April 25, 2012 Judgment Order. ODC Ex. 1, bates stamp 4-5. The letter outlined the information in paragraphs 2 through 10 herein. Id.
12. On or about August 5, 2013, Complainant filed an ethics complaint against Respondent. ODC Ex. 1.
13. By letter dated August 13, 2013, Disciplinary Counsel forwarded the complaint to Respondent asking for a response thereto. ODC Ex. 2.
14. Respondent did not respond.
15. By letter dated September 20, 2013, sent via certified and regular mail, Disciplinary Counsel again wrote to Respondent asking for a response to the complaint. ODC Ex. 3. The return receipt was signed for by Judy Ropp on or about September 23, 2013. Id.
16. Again, Respondent did not respond.
17. Because Respondent failed to work on Mr. Davis' case and failed to communicate with Mr. Davis, he violated Rules 1.3, 1.4(a), and 1.4(b) of the Rules of Professional Conduct, which provides as follows:

Rule 1.3. Diligence.

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

and

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.

18. Because Respondent engaged in dilatory practices and failed to make reasonable efforts consistent with Mr. Davis' objective, he has violated Rule 3.2 of the Rules of Professional Conduct, which provides as follows:

Rule 3.2. Expediting litigation.

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

19. Because Respondent failed to respond to Disciplinary Counsel, he has violated Rule 8.1(b) of the Rules of Professional Conduct, which provides as follows:

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.

20. Because Respondent falsely informed Mr. Davis on his work and intent in the case, which did lead to a default judgment, he has violated Rule 8.4(c) and 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:

* * *

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

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

III. DISCUSSION

The Supreme Court of Appeals of West Virginia 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). Factors to be considered in imposing 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. *See also*, Syl. Pt. 4, Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d 722 (1998).

A. Respondent violated duties to his clients, to the public, to the legal system and to the legal profession.

Glenn Davis hired Respondent in February of 2012 and paid One Thousand Five Hundred Dollars (\$1,500.00) as a retainer. Hrg. Trans. p. 67. Mr. Davis needed Respondent to represent him regarding a lawsuit wherein the company Comverge was named as a defendant. Hrg. Trans. p. 68-69. Mr. Davis was the Chief Executive

Officer of Comverge. Respondent told Mr. Davis that he had filed documents in the case but Respondent actually never filed any documents in the case. Hrg. Trans. p. 69. A default judgment was entered against Comverge and Mr. Davis only became aware of that after receiving a copy of the judgment from the Court. Id. Mr. Davis had spoken to Respondent about filing a rebuttal to the motion for default but Respondent failed to do so which resulted in the default judgment being entered. At this point, the cost to reverse the default judgment would cost about the same amount as the actual default judgment. Id. Mr. Davis indicated that the actual judgment added up to around Thirty Thousand Dollars (\$30,000.00). Hrg. Trans. 78. Mr. Davis then attempted to have reasonable communication with Respondent after receiving the default judgment Order, but was unsuccessful in those attempts. Hrg. Trans. p. 70. Mr. Davis admitted that it was easy to communicate with Respondent at the beginning of representation but such communication stopped after the retainer was paid. Hrg. Trans. p. 71-72. Further, Respondent never provided a client file to Mr. Davis. Hrg. Trans. p. 75. Mr. Davis was able to get a refund of the One Thousand Five Hundred Dollars (\$1,500.00) by going to the credit card company to dispute the payment and Respondent did not fight that dispute filed by Mr. Davis. Hrg. Trans. p. 75-76. The default judgment is still enforceable against Comverge, Inc. Hrg. Trans. p. 78.

Respondent failed to respond to any requests from Disciplinary Counsel regarding Mr. Davis' complaint. On several occasions, Respondent was provided correspondence asking for a response and Respondent failed to respond. ODC Ex. 2, 3. Respondent

violated his duties to the profession by failing to respond to requests for information from the Office of Disciplinary Counsel.

B. Respondent acted intentionally and knowingly.

There is no evidence to suggest that Respondent did not act intentionally or knowingly. Respondent intentionally took a retainer fee and failed to perform work in this matter. Respondent also failed to diligently handle his clients' case and failed to have reasonable communication with his clients. Further, Respondent failed to respond to multiple requests from Disciplinary Counsel in this case.

C. The amount of real injury is great.

Mr. Davis' business, Comverge, Inc. has suffered a Thirty Thousand Dollar (\$30,000.00) default judgment. The cost to remove the default judgment would cost just as much. While Comverge is no longer in existence, if the company were to reform, that default judgment would have to be dealt with at that time.

D. There are several aggravating factors present.

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.'" Lawyer Disciplinary Board v. Scott, 213 W.Va. 216, 579 S.E. 2d 550, 557 (2003) *quoting ABA Model Standards for*

Imposing Lawyer Sanctions, 9.21 (1992).

Rule 9.22(c) of the *ABA Model Standards for Imposing Lawyer Sanctions* indicates that a pattern of misconduct constitutes an aggravating factor. Respondent has another pending disciplinary Case No. 13-0508 that involves many of the same violations as this case. Respondent's misconduct in this case occurred just after the filing of the Statement of Charges in 13-0508 and shows his continued pattern of misconduct. Therefore, Respondent has exhibited a pattern and practice of accepting retainer fees but then failing to carry out services; failing to communicate with his clients; failing to diligently handle matters; failing to timely return retainer fees and client files; and failing to respond to requests for information from the Office of Disciplinary Counsel during the investigation of multiple disciplinary complaints.

Additionally, the Scott Court noted that the ABA Model Standards for Imposing Lawyer Sanctions has also recognized "multiple offenses" as an aggravating factor in a lawyer disciplinary proceeding. Scott, 579 S.E.2d at 558. Respondent has committed multiple violations of the Rules when looking at both this case and Case No. 13-0508. The multiple infractions committed by Respondent go to his integrity and fitness to practice law. Respondent also has been practicing law for over ten (10) years which gives him substantial experience in the practice of law.

E. There are mitigating factors present.

The Scott Court also 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. 216, 579 S.E.2d 550, 557 (2003).

The following mitigating factors are present: absence of a selfish or dishonest motive and remorse. Respondent has been licensed to practice law in West Virginia since October 15, 1997, and has no prior discipline from the West Virginia Supreme Court of Appeals. The evidence does not suggest that Respondent had selfish or dishonest motive in these matters. Respondent has also expressed remorse for his misconduct.

While Respondent claimed at the hearing that he was suffering from depression during the time frame of some of these complaints, he did not present any medical testimony or evidence or call any witnesses on his behalf. Hrg. Trans. p. 252-256. Moreover, Respondent’s alleged undiagnosed depression is not sufficient to mitigate any sanction in this matter. In Lawyer Disciplinary Board v. Dues, 218 W.Va. 104, 624 S.E.2d 125 (2005), the Supreme Court of Appeals of West Virginia stated that “[i]n a lawyer disciplinary proceeding, a mental disability is considered mitigating when: (1) there is evidence that the attorney is affected by a mental disability; (2) the mental disability caused the misconduct; (3) the attorney’s recovery from the mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.” In this case, there is no clear and convincing evidence to establish that Respondent suffered any mental disability or that the alleged disability caused the misconduct because it

appears that Respondent never sought treatment. Likewise, Respondent's cannot show that any recovery was demonstrated by a meaningful and sustained period of successful rehabilitation and no evidence was presented that the recovery arrested the misconduct and that recurrence of similar misconduct is unlikely.

IV. SANCTION

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syllabus 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, 410 S.E.2d 279, 281 (1991). In addition, discipline must serve as both instruction on the standards for ethical conduct and as a deterrent 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.

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

In Committee on Legal Ethics v. Mullins, the Supreme Court of Appeals of West Virginia stated that “[m]isconduct or malpractice consisting of negligence or inattention, in order to justify a suspension or annulment, must be such as to show the attorney to be unworthy of public confidence and an unfit or unsafe person to be entrusted with the duties of a member of the legal profession or to exercise its privileges.” Mullins, 159 W.Va. 647, 652, 226 S.E.2d 427, 430 (1976) (indefinite suspension for failure to act with reasonable diligence, failure to communicate effectively with clients, and failure to respond to the disciplinary authorities repeated requests for information, including failure to appear at the disciplinary hearing), *quoting* Syllabus No. 1, In Re Damron, 131 W.Va. 66, 45 S.E.2d 741 (1947). *See also*, Lawyer Disciplinary Board v. Keenan, 189 W.Va. 37, 427 S.E.2d 471 (1993) (indefinite suspension for failure to provide competent representation, failure to act with reasonable diligence, failure to communicate effectively with his clients, and failure to return unearned fees); Committee on Legal Ethics v. Karl, 192 W.Va. 23, 449 S.E.2d 277 (1994) (three month suspension for failure to act with reasonable diligence, failure to communicate effectively with clients, and failure to respond to the disciplinary authorities repeated requests for information); Lawyer Disciplinary Board v. Burgess, No. 23030 (WV 4/25/96) (unreported) (two year suspension with one year suspension deferred while respondent undergoes a one-year period of supervision following reinstatement for violations of Rules of Professional Conduct 1.1, 1.3, 1.4 (a) and (b), 1.16(a)(3), 1.16(d); 8.1(b); and 8.4 (c) and (d)); Lawyer Disciplinary Board v. Holmstrand, No. 22523 (WV 5/30/96) (unreported) (one

year suspension and psychiatric evaluation ordered for multiple violations of Rules of Professional Conduct 1.3, 1.4(a), 3.3(a)(1)(4) and 8.4(c) and (d)); Lawyer Disciplinary Board v. Farber, No. 32598 (WV 1/26/06) (unreported) (indefinite suspension and a psychological counseling ordered to determine fitness to practice law for violating Rules of Professional Conduct 1.1, 1.3, 1.4, and 8.1(b), including failure to appear at the disciplinary hearing); Lawyer Disciplinary Board v. Simmons, 219 W.Va. 223, 632 S.E.2d. 909 (2006) (the Supreme Court of Appeals of West Virginia Court, while expressing concern about the effectiveness of short suspensions, nonetheless, suspended an attorney for twenty (20) days for failure to act with reasonable diligence, failure to appear for court hearings on numerous occasions, and failure to communicate effectively with his clients); Lawyer Disciplinary Board v. Morgan, 228 W.Va. 114, 717 S.E.2d 898 (2011) (one year suspension for pattern of failing to communicate with clients and failing to respond to Office of Disciplinary Counsel along with failure to handle client matters with diligence in multiple matters); Lawyer Disciplinary Board v. Phalen, No. 11-1746 (WV 11/14/12) (unreported) (one year suspension for multiple offenses of diligence, communication, failure to provide refunds, failure to respond to Office of Disciplinary Counsel, and failure to provide itemizations).

In addition, Standard 4.42 of the *ABA Model Standards for Imposing Lawyer Sanctions* states that suspension is generally appropriate when a lawyer “(a) 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 causes injury or potential injury to a client.”

Respondent's actions in these cases clearly rise to such a level to establish that Respondent is unworthy of public confidence and unfit to be entrusted with the duties or privileges of a licensed member of the legal profession. This is not a case of simple negligence in communication and neglect of legal representation. Respondent clearly exhibits a pattern and practice of a lack of concern for some of the fundamental aspects of the practice of law outlined in the Rules of Professional Conduct, such as his duty to maintain reasonable communication with his clients and his duty to diligently handle matters for his clients. Consideration must also be given to Respondent's apparent disregard of his duty to respond to lawful demands for information from disciplinary authority.

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 revocable 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.

V. RECOMMENDED SANCTIONS

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. It is the position of Disciplinary Counsel that for his conduct of failing to properly represent his clients and his failure to respond to Disciplinary Counsel's requests that Respondent's license should be suspended. A principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

For the reasons set forth above, this Hearing Panel Subcommittee of the Lawyer Disciplinary Board recommends the following sanctions:

- A. That Respondent's law license be suspended for one year which should run concurrent to any suspension issued in Case No. 13-0508;
- B. That Respondent shall be required to petition for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure;
- C. That upon reinstatement, Respondent will remain on probation for a period of one year;
- D. That Respondent's practice shall be supervised for a period of one year by an attorney agreed upon between the Office of Disciplinary Counsel and Respondent. The goal of the supervised practice will be to improve the quality and effectiveness of Respondent's law practice to the extent that Respondent's sanctioned behavior is unlikely to recur;
- E. That Respondent shall complete nine hours of CLE during the next

reporting period, 2014-2016, in addition to what he is otherwise required to complete to maintain his active license to practice in the area of ethics and law office management; and

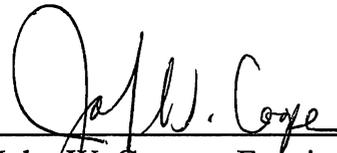
- F. That Respondent be ordered to pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Accordingly, the Hearing Panel Subcommittee recommends that the Supreme Court of Appeals adopt these findings of fact, conclusions of law, and recommended sanctions as set forth above. Both the Office of Disciplinary Counsel and Respondent have the right consent or object pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary Procedure.



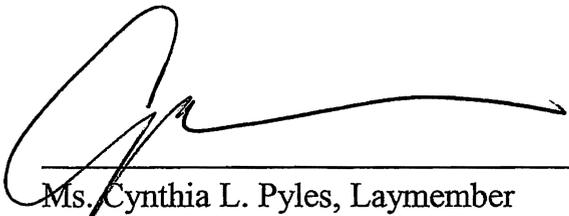
Paul T. Camilletti, Esquire
Chairperson of the
Hearing Panel Subcommittee

Date: 6/23/14



John W. Cooper, Esquire
Hearing Panel Subcommittee

Date: 6/18/2014



Ms. Cynthia L. Pyles, Laymember
Hearing Panel Subcommittee

Date: 6/14/2014

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