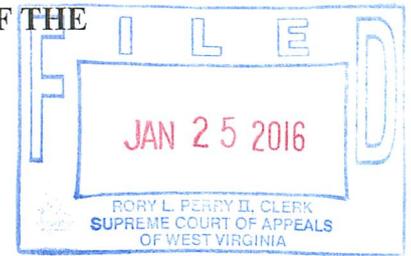


BEFORE THE SUPREME COURT OF APPEALS OF THE  
STATE OF WEST VIRGINIA



LAWYER DISCIPLINARY BOARD,

Complainant,

v.

Nos. 14-0749 and 15-0009

HEIDI M. GEORGI STURM,

Respondent.

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REPLY BRIEF OF THE LAWYER DISCIPLINARY BOARD

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## I. REPLY TO RESPONDENT'S BRIEF<sup>1</sup>

This matter is before the Court pursuant to the "Report of the Hearing Panel Subcommittee" issued on September 16, 2015, wherein the Hearing Panel Subcommittee properly found that the evidence established that Respondent committed violations of Rules 1.1, 1.3, 1.4(a), 1.4(b), 1.8(f), 1.14(a), 1.15(a), 1.16(d), 3.2, 8.1(b), 8.4(c), and 8.4(d) of the Rules of Professional Conduct in Supreme Court No. 14-0749, and committed violations of Rules 1.3, 1.4(a), and 8.4(d) of the Rules of Professional Conduct for Supreme Court No. 15-0009. Respondent stipulated to violations of Rules 1.1, 1.3, 1.4(a), 1.4(b), 1.8(f), 1.14(a), 1.15(a), 3.2, 8.1(b), 8.4(c), and 8.4(d) in Supreme Court No. 14-0749. The other violations were found by the Hearing Panel Subcommittee. While Respondent does not dispute any of the findings of the Hearing Panel Subcommittee, this Court has held that "[t]he burden is on the attorney at law to show that the factual findings are not supported by reliable, probative, and substantial evidence on the whole adjudicatory record made before the Board." Lawyer Disciplinary Board v. Cunningham, 195 W.Va. 27, 34, 464 S.E.2d 181, 189 (1995); Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 290, 452 S.E.2d 377, 381 (1994). Respondent has not shown that the factual findings in this case are incorrect.

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Committee on Legal Ethics v. Keenan, 189 W.Va. 37, 40, 427 S.E.2d 471, 473 (1993) (*per curiam*); quoting Syl. Pt. 3, in part, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984). It cannot be said that Respondent's conduct in this case does not conform to the expectations of the profession as stated

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<sup>1</sup> Respondent filed her Brief with a Motion to file it Out of Time. The Supreme Court of Appeals of West Virginia indicated the Motion would be granted during a telephone call on January 21, 2016. Pursuant to this Court's Scheduling Order dated November 3, 2015, Disciplinary Counsel is filing her Reply Brief on or before January 25, 2016.

in the Rules of Professional Conduct. The evidence establishes that Respondent acted in a negligent manner, which is where a reasonable attorney failed to heed a substantial risk and deviated from the standard of care. However, Respondent has expressed remorse at various stages of these proceedings for her misconduct, and also had personal problems in dealing with her ex-husband's drug issues which affected their children.

## II. SANCTION

The principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Respondent is an attorney who expressed remorse for her misconduct and stipulated to all of the facts contained in both of the two (2) Statement of Charges. Respondent stipulated to several rule violations, but reserved the right to argue some rule violations. Respondent agreed to the sanctions proposed by Disciplinary Counsel and the sanctions proposed by the Hearing Panel Subcommittee. The evidence presented in this case clearly show that some of Respondent's problems with her law practice during the time frame of the complaints leading to the Statement of Charges can be attributed to issues with her ex-husband, and were problems that were not within her control.

Disciplinary Counsel noted in her brief that there have been recent cases from this Court dealing with the issues raised in this case. *See* Lawyer Disciplinary Board v. Connor, 234 W.Va. 648, 769 S.E.2d 25 (2015) and Lawyer Disciplinary Board v. Richard W. Hollandsworth, No. 14-0022 (WV 9/18/14) (unreported). The attorneys in both of these cases were suspended from the practice of law for ninety (90) days. In Connor, the only mitigating factor was remorse. There were no other mitigating factors in either Connor or Hollandsworth, as opposed to this case where there are several mitigating factors, including a cooperative attitude throughout the proceedings, no dishonest motive,

remorse, no prior disciplinary proceedings before this Honorable Court, and substantial personal problems. Further, the Connor and Hollandsworth cases focused on the attorneys failure to follow court orders, and that it is not an issue in this case. It is clear that this current case is different from the previous cases that resulted in suspensions for the attorneys.

Further, this Court has various cases wherein a reprimand with supervised practice was found to be the appropriate sanction in similar cases. *See* Lawyer Disciplinary Board v. Geraldine Roberts, 217 W.Va. 189, 617 S.E.2d 539 (2005): lawyer reprimanded for violations of Rules 1.1, 1.2(a), 1.3, 1.4, 1.16, and 8.1(b) and ordered to undergo supervised practice for an additional year; Lawyer Disciplinary Board v. Brentton W. Wolfingbarger, No. 29973 (WV 3/13/02): lawyer reprimanded for violations of Rules 1.4 and 8.1 and ordered to undergo supervised practice for eighteen (18) months (unreported case); Lawyer Disciplinary Board v. Lee F. Benford, No. 31795 (WV 1/19/05): lawyer reprimanded for violations of Rules 1.3, 1.4(a), and 8.1(b) and ordered to undergo supervised practice for two (2) years (unreported case); Lawyer Disciplinary Board v. Reggie R. Bailey, No. 31799 (WV 3/9/05): lawyer reprimanded for violations of Rules 1.3, 1.4 and 8.1 and ordered to undergo one (1) year of supervised practice (unreported case); Lawyer Disciplinary Board v. Richard L. Vital, No. 32229 (WV 5/25/05): lawyer reprimanded for violations of Rules 1.3, 1.4, and 8.1(b) and ordered to undergo supervised practice for two (2) years (unreported case); Lawyer Disciplinary Board v. David S. Hart, No. 33328 (WV 9/14/07): lawyer reprimanded for violations of Rules 1.3, 1.4, and 8.1(b) (unreported case); Lawyer Disciplinary Board v. April D. Conner, No. 35434 (WV 10/27/10): lawyer reprimanded for violations of Rules 1.3, 1.4, 8.1(b), 1.15(b), and Rules 1.16(b) and ordered to undergo supervised practice for one (1) year (unreported case); Lawyer Disciplinary Board v. Daniel R. Grindo, 231 W.Va. 365, 745 S.E.2d 256 (2013): lawyer reprimanded for

violations of Rules 1.3, 3.2, and 3.4(c); Lawyer Disciplinary Board v. Donna M. Price, No. 11-1345 (WV 3/25/14): lawyer reprimanded for violations of Rules 1.1 and 1.3 and ordered to undergo supervised practice for three (3) years (unreported case); and Lawyer Disciplinary Board v. Donna M. Price, No. 13-0478 (WV 5/27/14): lawyer reprimanded for violations of Rule 8.1(b) and ordered to undergo supervised practice for three (3) years (unreported).

Regarding the repayment of Five Thousand Dollars (\$5,000.00) to Ms. Wright-Ochoa, Respondent did not object to the recommendation from the Hearing Panel Subcommittee, and did not object to the repayment in her own brief. As stated in the Hearing Panel Subcommittee recommendation, Respondent failed to prove that she earned the fee by not properly documenting her work or complying with the fee agreement signed in the matter. *See Bass v. Cotelli Rose*, 216 W.Va. 587, 592, 609 S.E.2d 848, 853 (2004) (*citing* Syl. Pt. 2, Committee on Legal Ethics of West Virginia State Bar v. Tatterson, 177 W.Va. 356, 352 S.E.2d 107 (1986)).

### III. CONCLUSION

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

**For Supreme Court No. 14-0749:**

- A. That Respondent shall be reprimanded;
- B. That Respondent's practice shall be supervised for a period of two (2) years by an attorney agreed upon between the Office of Disciplinary Counsel and Respondent<sup>2</sup>.

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<sup>2</sup> Disciplinary Counsel has removed the language about the supervised practice running concurrently with the supervised practice in 15-0009 as it was indicated in footnote 10 of Case No. 15-0009 that supervised practice was not being ordered. Disciplinary Counsel understands such language is a contradiction.

Respondent shall meet with her supervising attorney every two (2) weeks. 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 not likely to recur;

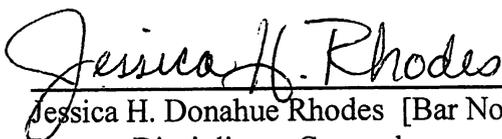
- C. That Respondent shall refund the Five Thousand Dollars (\$5,000.00) retainer fee to Ms. Wright-Ochoa; and
- D. That, pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, Respondent shall pay costs of this disciplinary proceeding.

**For Supreme Court No. 15-0009:**

- A. That Respondent shall be reprimanded;
- B. That, pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, Respondent shall pay costs of this disciplinary proceeding.

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

*Respectfully submitted,*  
The Lawyer Disciplinary Board  
By Counsel



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**CERTIFICATE OF SERVICE**

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This is to certify that I, Jessica H. Donahue Rhodes, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 25<sup>th</sup> day of January, 2016, served a true copy of the foregoing **"REPLY BRIEF OF THE LAWYER DISCIPLINARY BOARD"** upon Respondent Heidi M. Georgi Sturm, by mailing the same via United States Mail with sufficient postage, to the following address:

Heidi M. Georgi Sturm, Esquire  
301 Adams Street, Suite 803  
Fairmont, West Virginia 26554

  
\_\_\_\_\_  
Jessica H. Donahue Rhodes