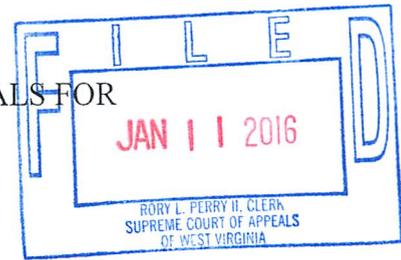


BEFORE THE SUPREME COURT OF APPEALS FOR
THE STATE OF WEST VIRGINIA



LAWYER DISCIPLINARY BOARD,

Complainant,

Nos. 14-0749 & 15-0009

v.

HEIDI M. GEORGI STURM,

Respondent.

BRIEF OF RESPONDENT

Respectfully Submitted,

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STATEMENT OF THE CASE

A hearing was held before the Hearing Panel Subcommittee on the 4th day of May, 2015, following the filing of a complaint and a Statement of Charges against the Respondent on or about July 31st, 2014. A second complaint and Statement of Charges against the Respondent on or about January 9th, 2015.

At the hearing, the Hearing Panel Subcommittee heard from Laverne Wright-Ochoa, Lael Brown, and Kenny Greynolds as well as the Respondent. No objections were made to any of the Petitioner's or the Respondent's exhibits, nor to the Joint Exhibits.

A Report was filed with the West Virginia Supreme Court of Appeals on or about September 16th, 2015, with the Hearing Panel Subcommittee's decision. In Case No. 14-0749 the Hearing Panel Subcommittee found violations of Rules of Professional Conduct 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) and in Case No. 15-0009 violation of Rules of Professional Conduct 1.3, 1.4(a), and 8.4(d). Additionally, the Hearing Panel Subcommittee recommended the following as an appropriate sanction: 1.) The Respondent shall be reprimanded; 2.) In Case No. 14-0749, the Respondent's practice shall be supervised for a period of two (2) years by an agreed upon attorney with whom the Respondent shall meet every two weeks; 3.) The Respondent reimburse Laverne Wright-Ochoa in the amount of \$5,000.00; 4.) The Respondent be responsible for the costs associated with both proceedings.

The Respondent had previously stipulated to the facts in Case No. 14-0749 and agreed to the recommended sanctions. In Case No. 15-0009, the Respondent did not stipulate to the allegations, but agreed that should the Hearing Panel Subcommittee find she did in fact violate the Rules of Professional Conduct that she would agree to be sanctioned in accordance with the

recommendations of the Hearing Panel Subcommittee.

Upon receipt of the Hearing Panel Subcommittee's Report, the Respondent did not file any objections as she understood and accepted the position of the Hearing Panel Subcommittee in the above-styled matters.

SUMMARY OF ARGUMENT

The Hearing Panel Subcommittee found that the Respondent committed violations of the Rules of Professional Conduct in Case No. 14-0749 to which the Respondent stipulated and agreed to the sanctions recommended. The Respondent acknowledged aggravating factors and testified to a variety of mitigating factors in this matter. The Respondent did provide to the Hearing Panel Subcommittee a non-contemporaneous time sheet to verify she actually did research and work on the *Habeas* petition in this matter; however, the Hearing Panel Subcommittee determined the Respondent was due a complete refund in this matter.

In Case No. 15-009 the Respondent did not agree that there were violations of the Rules of Professional Conduct but acknowledged that should the Hearing Panel Subcommittee find the Respondent's actions had violated her duty to her client, she would accept the recommended sanction of the Hearing Panel Subcommittee. The Respondent acknowledged she was unfamiliar with Anders briefs until the filing of this complaint and would greatly appreciate learning more through continuing legal education seminars to insure this tool could be properly used in future matters.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Respondent does not believe there are any new issues to be addressed by oral argument on her behalf pursuant to Rule 20 of the Rules of Appellate Procedure. However, based upon the Notice of Argument dated December 22nd, 2015, this matter is set for oral argument on Tuesday, February 23rd, 2016.

ARGUMENT

Upon finding an attorney has failed to abide by the Rules of Professional Conduct as in Case No. 15-0009 or, as in Case No. 14-0749, stipulated to such, the Court shall consider the following: 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 as articulated in Office of Disciplinary Counsel v. Jordan, 204 W. Va. 495, 513 S.E.2d 722 (1998) and Rule 3.16 of the Rules of Lawyer Disciplinary Procedure. In the present case, the Respondent acknowledged her failure to abide the Rules of Professional Conduct and in fact stipulated to those facts. The only fact upon which the Office of Disciplinary Counsel and the Respondent could not agree was whether the Respondent would be required to pay the initial retainer in the matter back to the client.

In regards to Case No. 15-0009, the Respondent considered the request of Mr. Greynolds, reviewed her entire file in this matter, and made a determination that an appeal was unwarranted in this matter based upon the Rules of Professional Conduct, Rule 3.1, that an appeal should not be pursued unless counsel feels in good faith that an error has been committed and that there is a reasonable basis for the extension, modification, or reversal of existing law. Although the Respondent informed the client there was no grounds for an appeal, she did not file an Anders brief or move to withdraw from this matter. Based upon the testimony at the hearing, the Hearing Panel Subcommittee found that this was a violation of the Respondent's duty to her client and resulted in his loss of this right to appeal.

The Hearing Panel Subcommittee found that the Respondent acted negligently in both matters not that she acted intentionally or knowingly to violate her duties to her clients in these matters. Negligence is defined as “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 that situation.” ABA Standards for Imposing Lawyer Sanctions.

The injury suffered by Lael Brown was such that had the Habeas petition been filed and been successful, Mr. Brown could have been released from incarceration prior to January 2013. In the case of Mr. Greynolds, although the likelihood that the appeal of the matter would have been successful was very minimal, the Respondent should have filed an Anders brief and a motion to withdraw from representation. Although there was no finding by the Hearing Panel Subcommittee that either the Habeas petition would have been successful or that Mr. Brown served an additional period of incarceration due to the Respondent’s failure, there is a possibility that the Habeas could have been successful and Mr. Brown released prior to January 2013. As for Mr. Greynolds, the Hearing Panel Subcommittee acknowledged there was little likelihood of success of the appeal. There was real injury to Mr. Brown as acknowledged by the Respondent’s stipulation in Case No. 14-0479. There was injury to Mr. Greynolds in that had an Anders brief been filed along with a motion to withdraw, alternative counsel could have addressed Mr. Greynolds’s appellate matters.

The Respondent admitted that she had prior contact with the Office of Disciplinary Counsel and was experienced in the practice of law, aggravating factors according to Lawyer Disciplinary Board v. Scott, 213 W. Va. 216, 579 S.E.2d 550, 557 (2003), “that aggravating

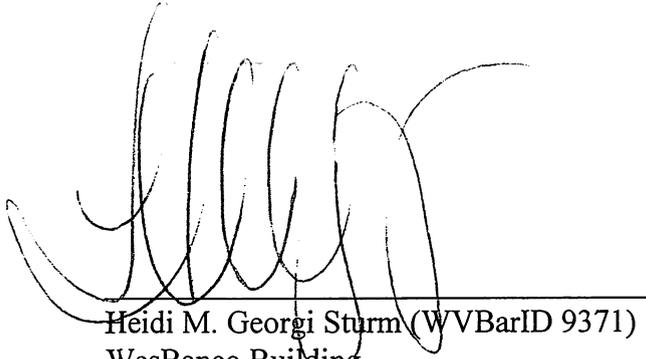
factors in a lawyer disciplinary proceeding are any considerations, or factors that may justify an increase in the degree of discipline. However, several mitigating factors are also present in the case at bar. Mitigation factors are also addressed by the Court in Scott as “any considerations or factors that may justify a reduction in the degree of discipline to be imposed.” Id at 557. The Hearing Panel Subcommittee found several mitigating factors in the present matter including cooperation and honesty with the Hearing Panel Subcommittee, no dishonest motives, no prior disciplinary proceedings before this Honorable Court as well as remorse. Additionally, the Respondent used the information presented in the complaints to make modifications in her time sheet records, billing, and communication with her clients. During the time in question, the Respondent was also dealing with personal issues relating to her ex-husband’s drug abuse issues.

The Respondent recognizes the sanction recommended by the Hearing Panel Subcommittee as reasonable in light of the circumstances. According to the ABA Model Standards for Imposing Lawyer Sanctions, § 4.13, the purpose of a reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the client, the public or the legal system. Wherefore, the Respondent’s stipulation and agreement to the sanctions recommended by the Hearing Panel Subcommittee reflect that recognition. Additionally, based upon the findings of the Hearing Panel Subcommittee that Mr. Greynolds did in fact suffer an injury by the Respondent’s failure to file an appeal or an Anders brief and motion to withdraw, Respondent acknowledged that she would appreciate learning how to effectively use an Anders brief to prevent this issue from occurring in the future.

CONCLUSION

The findings of the Hearing Panel Subcommittee were reasonable in light of the testimony of the parties as well as the stipulation of the Respondent.

Respectfully Submitted,
Heidi M. Georgi Sturm,
Respondent,
Pro Se,

A handwritten signature in black ink, appearing to read 'Heidi M. Georgi Sturm', is written over a horizontal line.

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CERTIFICATE OF SERVICE

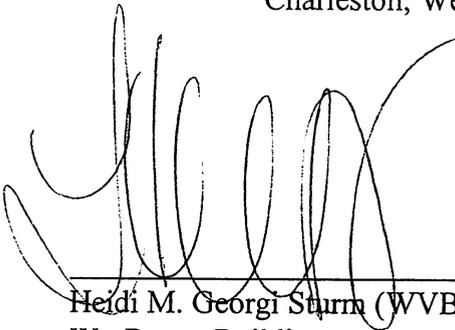
I, Heidi M. Georgi Sturm, Respondent, do hereby certify that a true copy of the foregoing

Brief of Respondent was served by the following method:

- United States Mail, Postage Pre-Paid
- Certified Mail, Return Receipt Requested
- Hand-Delivery
- FAX to _____
- Process Server Private Sheriff's Department
- Email to _____

on this the 6th day of January, 2016, at the following address(es):

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