

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

**LAWYER DISCIPLINARY BOARD,**

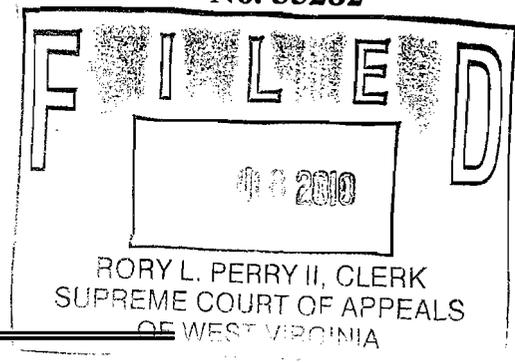
**Complainant,**

**v.**

**JOSEPH P. ALBRIGHT, JR.,**

**Respondent.**

**No. 35282**



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**BRIEF OF THE LAWYER DISCIPLINARY BOARD**

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Rachael L. Fletcher Cipoletti [Bar No. 8806]  
Chief Lawyer Disciplinary Counsel  
Office of Disciplinary Counsel  
2008 Kanawha Boulevard, East  
Charleston, West Virginia 25311  
(304) 558-7999  
(304) 558-4015 – facsimile

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## I. NATURE OF PROCEEDINGS AND RECOMMENDED DECISION OF THE HEARING PANEL SUBCOMMITTEE

This is a disciplinary proceeding against Respondent Joseph P. Albright, Jr., (hereinafter "Respondent"), arising as the result of a Statement of Charges issued against him and filed with the Supreme Court of Appeals of West Virginia on or about October 19, 2009. Respondent failed to file an Answer to the Statement of Charges, and on January 26, 2010, Disciplinary Counsel filed the following motions: (1) "Disciplinary Counsel's Motion to Deem Admitted the Factual Allegations in the Statement of Charges"; and (2) "Motion to Exclude Testimony of Witness and Documentary Evidence or Testimony of Mitigating Factors". These motions were heard by the Hearing Panel Subcommittee at the prehearing held on February 18, 2010. The Hearing Panel Subcommittee denied both motions by Order entered March 3, 2010.

On March 3, 2010, the evidentiary hearing on this matter was held in Parkersburg, West Virginia. The Hearing Panel Subcommittee was composed of Davie W. Frame, Esquire, Chairperson, David A. Jividen, Esquire, and Mrs. Susan V. Fisher, layperson. Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. Respondent appeared *pro se*. The Hearing Panel Subcommittee admitted ODC Exhibits 1-76 and Respondent's Exhibits 1-5 into evidence. The Hearing Panel Subcommittee heard testimony from David K. Samuels, Richard Hart, Grant DeGarmo, Jennifer Cooper, Erin Gross, Mary Hardesty, Susan D. Knopp, Jackie R. Stewart, Jr., Richard W. Skinner and Respondent.

At the conclusion of the hearing, the parties were directed to file its Proposed Findings of Facts, Conclusions of Law and Recommended Sanction by May 3, 2010. ODC filed the same on or about May 3, 2010. Despite being ordered to do so by the Hearing Panel Subcommittee, Respondent failed to file his Proposed Findings of Facts, Conclusions of Law and Recommended Sanction.

On or about June 29, 2010, the Hearing Panel Subcommittee issued its decision in this matter and filed with the Supreme Court of Appeals of West Virginia the "Hearing Panel's Findings of Fact, Conclusions of Law and Recommendations". The Hearing Panel Subcommittee adopted ODC's findings of facts and conclusions of law in whole, but rejected ODC's recommendation of sanctions in part by rejecting the recommendation of a one year suspension and instead recommended a three month suspension to this Honorable Court. It is noted that the Hearing Panel Subcommittee adopted the remaining provisions of Disciplinary Counsel's recommended sanction and did not otherwise provide written explanation for the decision to reduce the suspension.

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

1. That Respondent be suspended from the practice of law for a period of three (3) months;
2. That Respondent be required to petition for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure;
3. That prior to petitioning for reinstatement, Respondent pay restitution to:
  - A. Complainant David A. Samuels in the amount of \$600.00; and
  - B. Complainant Jennifer Cooper in the amount of \$1,200.00.

4. That, upon reinstatement, Respondent's practice be supervised for a period of two (2) years;
5. That Respondent complete nine (9) hours of CLE in ethics, specifically in office management, in addition to such ethics hours he is otherwise required to complete to maintain his active license to practice, said additional nine (9) hours to be completed before he is reinstated;
6. 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; and
7. That Respondent be required to meet with a licensed psychologist who is previously approved by the Office of Disciplinary Counsel and follow whatever recommendations are made by said psychologist.

On or about September 9, 2010, this Honorable Court rejected the recommendation of the Hearing Panel Subcommittee and ordered the parties to prepare briefs in support of their respective positions.

## II. STANDARD OF REVIEW

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. *See*, Syl. Pt. 1, Lawyer Disciplinary Board v. McGraw, 194 W. Va. 788, 461 S.E.2d 850 (1995). 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. Roark v. Lawyer Disciplinary Board, 207 W. Va. 181, 495 S.E.2d 552 (1997); Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 452 S.E.2d 377 (1994). The Supreme Court of Appeals 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. McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381.

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. Lawyer Disciplinary Board v. Cunningham, 195 W. Va. 27, 464 S.E.2d 181 (1995). 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." Cunningham, 464 S.E.2d at 189; McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381. The Supreme Court of Appeals 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).

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Joseph P. Albright, Jr. is a lawyer practicing in Parkersburg, Wood County, West Virginia, and, as such, is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board. Respondent was admitted to the West Virginia State Bar on May 17, 1988.

**Count I**  
**Complaint of David K. Samuels**  
**I.D. No. 06-02-589**

2. On or about July 12, 2005, Complainant retained Respondent in a custody matter and paid \$750.00 for a retainer fee. Complainant asserted that Respondent failed to adequately communicate with him and failed to diligently pursue his interests in the matter.
3. On the day of the hearing on or about October 20, 2005, Complainant telephoned Respondent's office and was advised that Respondent would not be appearing at the hearing.
4. Instead, Respondent's then law partner, James Bradley, Esquire, appeared on his behalf. Complainant asserted that he did not have adequate time to explain his case to Mr. Bradley and Mr. Bradley omitted at least one important issue, which did not become a part of the court record.
5. Complainant subsequently called Respondent's office several times inquiring about the status of his case. Complainant said Respondent was never available and that his messages were never returned.
6. On or about April 20, 2006, Complainant mailed Respondent a letter stating that he had no communication from either Respondent or Mr. Bradley and requested that action be taken in his case within two weeks.
7. In or about May 2006, Complainant called Respondent's office and was advised that Respondent was waiting for a copy of the court record from the Family Court.

8. On or about December 5, 2006, the Office of Disciplinary Counsel sent a copy of the complaint by first class mail to Respondent and directed him to file a response in the matter within twenty days.
9. After receiving no response, on or about January 2, 2007, the Office of Disciplinary Counsel sent Respondent a second letter by certified mail stating that if he did not file a response within ten days, that he would be subpoenaed to appear at the Office of Disciplinary Counsel for a sworn statement.
10. Respondent filed a response on or about January 25, 2007, and stated that although the Order from the hearing had not been filed in Complainant's case, that he did receive the desired relief. Respondent further stated that he would submit the required Order on or before January 31, 2007, and request that the relief be retroactive.
11. Complainant filed an additional response and stated that although Respondent stated he would submit the Order on or before January 31, 2007, as of February 6, 2007, the Order still had not been submitted to the Court.
12. Complainant retained new counsel who ultimately prepared and tendered the Order to the Family Court in or about April of 2007.
13. At his May 1, 2008 sworn statement at the Office of Disciplinary Counsel, Respondent agreed to provide an accounting of the \$750.00 in fees paid by Complainant.

14. On or about June 12, 2009, the Office of Disciplinary Counsel again requested by letter sent by certified mail and by first class mail that Respondent provide an the accounting of services performed for Complainant.
15. Although the letter mailed by first class was not returned by the United States Postal Service, on or about July 3, 2009, the certified letter was returned to the Office of Disciplinary Counsel marked “unclaimed”.
16. To date, no such documentation has been received by the Office of Disciplinary Counsel.
17. Because Respondent failed to adequately communicate with Complainant in his domestic matter by failing to respond to his repeated requests for information, he has violated Rule 1.4(b) of the Rules of Professional Conduct, which provides as follows:

**Rule 1.4. Communication.**

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

18. Respondent failed to diligently pursue Complainant’s interests and despite being ordered by the Court failed to prepare and tender a Final Order to the Court and has violated Rule 1.3 and Rule 3.2 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.

**Rule 3.2. Expediting litigation.**

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

19. Respondent failed to provide an accounting of services rendered on Complainant's behalf when requested and failed to respond to the lawful requests from Disciplinary Counsel and 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.

**COUNT II**

**Complaint of Richard F. Hart**

**I.D. No. 07-01-173**

20. On or about April 18, 2005, Complainant retained Respondent to represent his interests in a misdemeanor charge of obstructing justice and paid him \$2,000.00 for a retainer fee.
21. In or about July of 2005, Complainant retained Respondent to represent him in a condemnation case against the State Road Commission and paid him an additional \$1,500.00 for a retainer fee.
22. Complainant stated that Respondent failed to adequately communicate with him, failed to keep him informed about the status of the cases, failed to diligently pursue

the matters and because of these issues Complainant ultimately terminated the attorney client relationship.

23. Complainant retained new counsel to address the matters and subsequently requested the refund of his attorney fees paid and requested the name of Respondent's legal malpractice insurance carrier.
24. Respondent did not respond to Complainant's letters.
25. Although Respondent filed a response to this complaint, by letter dated July 19, 2007, the Office of Disciplinary Counsel sent Respondent a letter requesting an itemization of the services provided for Complainant.
26. After receiving no response, on or about October 12, 2007, Disciplinary Counsel sent Respondent a second letter by certified mail directing him to provide an itemization of services to Complainant within ten days.
27. On or about November 6, 2007, Respondent sent a fax to the Office of Disciplinary Counsel requesting a one day extension to provide the itemization, which was granted.
28. After receiving no response to the request, Disciplinary Counsel sent Respondent another certified letter asking for the itemization.
29. At his May 1, 2008 sworn statement, Respondent again agreed to provide the itemization, but failed to provide the same.
30. On or about June 12, 2009, the Office of Disciplinary Counsel again requested by letter sent by certified mail and by first class mail that Respondent provide an accounting of services performed for Complainant.

31. Although the letter mailed by first class was not returned by the United States Postal Service, on or about July 3, 2009, the certified letter was returned to the Office of Disciplinary Counsel marked "unclaimed".
32. To date, no such documentation has been received by the Office of Disciplinary Counsel.
33. Because Respondent failed to adequately communicate with Complainant by failing to respond to his repeated requests for information, he has violated Rule 1.4(b) of the Rules of Professional Conduct as previously set forth.
34. Respondent failed to diligently pursue Complainant's interests and has violated Rule 1.3 of the Rules of Professional Conduct as previously set forth.
35. Respondent failed to provide an accounting of services rendered on Complainant's behalf when requested and failed to respond to the lawful requests from Disciplinary Counsel and has violated Rule 8.1(b) of the Rules of Professional Conduct as previously set forth.

**COUNT III**  
**Complaint of Marlene and Mitchell Grondalski**  
**I.D. No. 07-05-470**

36. Complainants were represented by Respondent in a civil suit. Among other things, Complainants alleged that Respondent did not communicate with them, was not diligent in representing them, and would not give them an itemized statement of the work he did on their case.

37. Respondent denied these allegations, but agreed at the May 1, 2008 sworn statement to provide an itemization of services provided to Complainants.
38. On or about June 12, 2009, the Office of Disciplinary Counsel again requested by letter sent by certified mail and by first class mail that Respondent provide an the accounting of services performed for Complainants.
39. Although the letter mailed by first class was not returned by the United States Postal Service, on or about July 3, 2009, the certified letter was returned to the Office of Disciplinary Counsel marked "unclaimed".
40. To date, no such documentation has been received by the Office of Disciplinary Counsel.
41. Respondent failed to provide an accounting of services rendered on Complainants behalf when requested and failed to respond to the lawful requests from Disciplinary Counsel and has violated Rule 8.1(b) of the Rules of Professional Conduct as previously set forth.

**COUNT IV**  
**Complaint of Grant DeGarmo**  
**I.D. No. 08-01-552**

42. Complainant filed this complaint and alleged that Respondent failed to diligently pursue an employment matter on his behalf and failed to adequately communicate with him.
43. On or about November 24, 2008, the Office of Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a response within twenty days.

44. After receiving no response, on or about May 7, 2009, the Office of Disciplinary Counsel sent Respondent a second letter by certified and by first class mail indicating that if he did not file a response by May 22, 2009, then a subpoena would be issued for his appearance for a sworn statement.
45. Although the letter mailed by first class was not returned by the United States Postal Service, on or about June 3, 2009, the certified letter was returned to the Office of Disciplinary Counsel marked "unclaimed".
46. On or about June 12, 2009, the Office of Disciplinary Counsel again requested by letter sent by certified mail and by first class mail that Respondent provide a written response in this matter.
47. Although the letter mailed by first class was not returned by the United States Postal Service, on or about July 3, 2009, the certified letter was returned to the Office of Disciplinary Counsel marked "unclaimed".
48. Respondent has failed to respond to the lawful requests from Disciplinary Counsel and has violated Rule 8.1(b) of the Rules of Professional Conduct as previously set forth.

**COUNT V**  
**Complaint of Jennifer A. Cooper**  
**I.D. No. 08-03-591**

49. On or about March 18, 2008, Complainant retained Respondent and paid him \$1,200.00 to represent her in a custody matter.
50. Complainant stated that as of May of 2008, nothing had been done in her case.

51. Complainant said that Respondent would not communicate with her and on or about August 7, 2008, she filed the petition herself with the Family Court.
52. On or about September 5, 2008, Complainant contacted Respondent who advised that he would schedule a hearing on the matter.
53. After not communicating with Respondent, on or about September 22, 2008, Complainant wrote the Family Court Judge requesting a hearing date.
54. On or about October 15, 2008, Complainant hired another attorney to represent her interests.
55. By letter dated December 12, 2008, the Office of Disciplinary Counsel sent the complaint to Respondent and directed him to file a response within twenty days.
56. After receiving no response, on or about January 6, 2009, the Office of Disciplinary Counsel sent Respondent a second letter by certified mail directing him to file a response within ten days or a subpoena would be issued for his appearance for a sworn statement.
57. Although the letter mailed by first class was not returned by the United States Postal Service, on or about February 2, 2009, the certified letter was returned as "unclaimed".
58. On or about February 4, 2009, the Office of Disciplinary Counsel sent Respondent a third letter by certified mail and regular mail directing him to file a response to the complaint on or before February 17, 2009.

59. Although the letter mailed by first class was not returned by the United States Postal Service, on or about March 5, 2009, this certified letter was returned as “unclaimed”.
60. On or about June 12, 2009, the Office of Disciplinary Counsel again requested by letter sent by certified mail and by first class mail that Respondent provide a written response in this matter.
61. Although the letter mailed by first class was not returned by the United States Postal Service, on or about July 3, 2009, the certified letter was returned to the Office of Disciplinary Counsel marked “unclaimed”.
62. Complainant indicated by letter received June 23, 2009, that she repeatedly requested the return of her client file, an itemization of services and the return of any unearned retainer, but her requests have gone unanswered by Respondent.
63. Respondent failed to adequately communicate with Complainant by failing to respond to her repeated requests for information and has violated Rule 1.4(b) of the Rules of Professional Conduct as previously set forth.
64. Respondent failed to diligently pursue Complainant’s interests in the domestic matter and has violated Rule 1.3 of the Rules of Professional Conduct as previously set forth.
65. Despite repeated requests, Respondent has failed to return Complainant’s client file and refund the payment of the fees that were not earned by Respondent and has violated Rule 1.16(d) of the Rules of Professional Conduct, which provides:

**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

66. Respondent accepted a fee in this matter and failed to provide the services for which he was retained and has violated Rule 1.5, Rule 8.4(c) and 8.4(d) of the Rules of Professional Conduct which provides as follows:

**Rule 1.5. Fees.**

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

**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.

67. Respondent failed to respond to the lawful requests from Disciplinary Counsel and has violated Rule 8.1(b) of the Rules of Professional Conduct as previously set forth.

**COUNT VI**  
**Complaint of Mary B. Hardesty**  
**I.D. No.: 09-03-025**

68. On or about January 21, 2008, Complainant retained Respondent to represent her daughter in a custody matter and paid him \$1,000.00.

69. Complainant alleged that Respondent failed to adequately communicate with her, failed to diligently pursue her daughter's interests and failed to provide an accounting of services upon request.

70. On or about January 14, 2009, the Office of Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a response within twenty days.

71. After receiving no response, on or about May 7, 2009, the Office of Disciplinary Counsel sent Respondent a second letter by certified and regular mail indicating that if he did not file a response by May 22, 2009, then a subpoena would be issued for his appearance for a sworn statement.

72. On or about June 12, 2009, the Office of Disciplinary Counsel again requested by letter sent by certified mail and by first class mail that Respondent provide a written response in this matter.

73. Although the letter mailed by first class was not returned by the United States Postal Service, on or about July 3, 2009, the certified letter was returned to the Office of Disciplinary Counsel marked "unclaimed".

74. Respondent failed to respond to the lawful requests from Disciplinary Counsel and has violated Rule 8.1(b) of the Rules of Professional Conduct as previously set forth.

**COUNT VII**  
**Complaint of Beth A. Agnew**  
**I.D. No.: 09-09-077**

75. Complainant stated that Respondent was appointed to be the executor of her uncle's estate. Complainant stated that Respondent would not return her telephone calls regarding the status of the estate.
76. On or about February 13, 2009, the Office of Disciplinary Counsel received and reviewed a complaint alleging the same and did not docket the same for investigation, but directed Respondent to contact Complainant within fifteen days of receipt of the disposition.
77. On or about March 5, 2009, Complainant's husband contacted the Office of Disciplinary Counsel and stated that Respondent had not contacted them.
78. The Office of Disciplinary Counsel telephoned Respondent's office and was advised by Respondent that he had traded several telephone messages with Complainant and that he had spoken with several other beneficiaries of the estate. Respondent advised that he would be disbursing checks to the beneficiaries within two to three days.
79. On or about April 2, 2009, Complainant filed another complaint against Respondent and stated that Respondent never contacted them and they have not received any disbursements from the estate.

80. On or about April 6, 2009, the Office of Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a response within twenty days.
81. After receiving no response, on or about May 7, 2009, the Office of Disciplinary Counsel sent Respondent a second letter by certified and regular mail indicating that if he did not file a response by May 22, 2009, then a subpoena would be issued for his appearance for a sworn statement.
82. On or about June 12, 2009, the Office of Disciplinary Counsel again requested by letter sent by certified mail and by first class mail that Respondent provide a written response in this matter.
83. Although the letter mailed by first class was not returned by the United States Postal Service, on or about July 3, 2009, the certified letter was returned to the Office of Disciplinary Counsel marked "unclaimed".
84. Respondent failed to respond to the lawful requests from Disciplinary Counsel and has violated Rule 8.1(b) of the Rules of Professional Conduct as previously set forth.

#### IV. 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* Syllabus Pt. 4, Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d 722 (1998).

**A. Respondent violated duties owed to his clients, to the public, to the legal system, and to the profession and exposed his clients to significant injuries.**

In this case, the evidence clearly establishes that Respondent did not diligently or promptly represent Complainant David K. Samuels. Respondent completely disregarded his duties to communicate with Complainant Samuels and utterly failed to follow through on his case for him causing financial harm and unnecessary emotional turmoil. (Count I, I.D. No. 06-02-589). On the day of the hearing on or about October 20, 2005, Complainant Samuels telephoned Respondent's office and was advised that Respondent would not be appearing at the hearing. Instead, Respondent's then law partner, James Bradley, Esquire, appeared on his behalf. Complainant Samuels indicated that although he was satisfied with the relative outcome of the hearing, his troubles with Respondent were just beginning. Complainant Samuels testified that he subsequently called Respondent's office several times inquiring about the status of his case. Specifically, Complainant Samuels was attempting to discern when Respondent's office intended to prepare and tender the Order from the hearing to the

Court for entry. Complainant Samuels said Respondent was never available and that his messages were never returned. [Hearing Transcript at 18].

Complainant Samuels testified that he sent a letter to Respondent approximately six months after the hearing wherein he requested that action be taken in his case within two weeks. [Hearing Transcript at 20; ODC Exhibit 1] He testified that he finally received a phone call from Respondent's staff to advise that they were waiting on the record from the Family Court. [Hearing Transcript at 21]. However, Complainant Samuels testified that no further communication took place and Respondent failed to prepare and tender the Order to the Court. [Hearing Transcript at 21-22].

These failures necessitated Complainant Samuels to file an ethics complaint against Respondent approximately 13 months after the hearing date. In response to the ethics complaint, Respondent advised both ODC and his client that he intended to prepare and tender this Order to the Court by January 31, 2007. [Hearing Transcript at 23; ODC Exhibit 4.] Respondent failed to do so. Ultimately, despite having paid Respondent \$750.00, Complainant was forced to retain another lawyer for \$600.00 to prepare and tender the Order to the Court approximately 2 years after the October 2005 hearing. [Hearing Transcript at 25]

Complainant Samuels testified that he believed that because of Respondent's actions, particularly his misrepresentations to ODC about preparing the Order in a timely fashion, that Respondent should not be permitted to practice law. [Hearing Transcript at 30]. Specifically, Complainant testified in part that "[i]f someone has a professional license and does not care about the job they are doing, they have no need to be practicing law." [Hearing Transcript

at 30]. Clearly, Respondent's conduct in Complainant Samuels case was an intentional, knowing breach of his duties to his client and resulted in financial and emotional injury to his client.

Complainant Richard Hart (Count II, I.D. No. 07-01-173) also testified before the Hearing Panel Subcommittee about his attorney client relationship with Respondent. Complainant retained Respondent in two matters, one involving the State Road Commission of which he paid a \$1,500.00 retainer and the second was a criminal matter of which he paid \$2,000.00 for a retainer fee. [Hearing Transcript 40-42]. Like Complainant Samuels, Complainant Hart testified about the extreme difficulty he experienced communicating with Respondent. [Hearing Transcript 42-45]. Like Complainant Samuels, Complainant Hart hired Respondent to perform legal services which he failed to perform and otherwise failed to follow through on. Like Complainant Samuels, Complainant Hart has suffered financial and emotional distress as a result of Respondent's conduct in his case. Complainant Hart testified that he believed Respondent "abandoned him" and that he "paid him \$3,500.00 for doing nothing. I had to hire two other attorneys that cost me a lot more than that, and I lost my property. And this has destroyed my wife and I. It's destroyed us. It's ruined our life." [Hearing Transcript at 60; 61]. Complainant Hart testified that Respondent "...has made a bad impression on all the good lawyers by the actions he has had with me..." [Hearing Transcript at 60].

Complainant Grant DeGarmo (Count IV, I.D. No. 08-01-552) also testified before the Hearing Panel Subcommittee about his relationship with Respondent. Complainant

DeGarmo testified about the utter lack of communication, the failures to act despite multiple promises of the same, the prejudice to his case caused by Respondent's neglect and the ultimate slap in the face of failing to even communicate the outcome of his Circuit Court matter. [Hearing Transcript 104-117]. Complainant DeGarmo testified that he discovered that his near six-year battle was concluded from a Circuit Clerk, not Respondent. [Hearing Transcript at 117]. He further learned that because Respondent failed to advise him of the adverse decision, that his period to appeal the same had lapsed approximately one month prior to his discovery. [Hearing Transcript at 118]. Complainant DeGarmo testified that he believed Respondent as his lawyer was "the only strength I had. He was the man to solve my job. I'm not a lawyer." [Hearing Transcript at 122].

Complainant Jennifer A. Cooper (Count V, I.D. No. 08-03-591) retained Respondent in March of 2008 for \$1,200.00 and testified that she ultimately had to hire another attorney because Respondent failed to communicate with her and failed to diligently pursue her case. Complainant Cooper testified that despite her dissatisfaction with Respondent she was willing to pay him for services rendered, but believed she would receive a return of the unearned portion of the fee. [Hearing Transcript 153; 160; and 161]. Complainant Cooper, despite retaining Respondent, testified how she too was abandoned by Respondent and after pleading with his law office, finally went down and picked up a copy of the petition and filed the same on her own. [Hearing Transcript at 161]. Complainant Cooper was also forced to hire another attorney to pursue her case without the aid of her client file from Respondent. [Hearing Transcript at 162].

Furthermore, Complainant Mary Hardesty, who's daughter Erin Gross was represented by Respondent, testified about the difficulty in communicating with Respondent during the case. She further testified about the hardships she encountered at the conclusion of the representation when she requested an itemization and return of certain client materials, all requests of the same were ignored. [Hearing Transcript at 210-213].

All of these witnesses from varying backgrounds with varied criminal and civil cases testified about the harm caused to them by Respondent's actions, or inaction, in their case. The evidence clearly demonstrates that Respondent violated his duties to his clients and, in some cases, caused significant financial harm. Respondent accepted fees and failed to provide services. Respondent refused to communicate with his clients. Then, after being terminated in some cases, refused to either tender an itemized statement for services, return any unearned portion of fees or return the client file to aid another attorney to assist his client. All of this conduct was violative of his duties to his clients and the public at large and all in violation of the Rules of Professional Conduct.

Finally, the record is replete with multiple uncontested instances wherein Respondent clearly failed to respond to multiple requests from the Office of Disciplinary Counsel's request for response to the complaints filed against him and/or for further information, all in violation of the Rules of Professional Conduct and his duties to the legal profession.

Respondent called as a witness in this matter Jack E. Stewart, who owns a Chrysler Jeep franchise. Mr. Stewart was charged with driving under the influence, second offense. He had hired the Respondent post conviction to represent him. The Respondent had provided

Mr. Stewart a cell phone number and he was able to speak with Respondent on a frequent basis. He was also happy with the timeliness of the legal representation and he believed that the Respondent performed well at an evidentiary hearing and, more importantly, he won the case. He indicated that he was happy with Respondent and would hire him if he had any other legal work. Thereafter, the Respondent called Michael W. Skinner, and the Respondent represented him in a divorce. He indicated he was always available when he needed to speak with him, that he believed he had represented him fairly and well in his divorce proceeding. Respondent then called Susan Knopp, who along with her husband had hired the Respondent to prosecute an appeal of a conviction and a Writ of *Habeas Corpus* for Susan Knopp's husband. She indicated that the Respondent has been very diligent in working on her husband's case and has responded to all of her requests and communications.

The Panel took into consideration the witnesses of Respondent, as well as the Respondent's testimony. Unfortunately, using several witnesses with whom he had performed well, only shows the Panel that when he wishes, he can respond and represent individuals in a proper and responsible manner. The problem is he is not consistent with this representation of all of his clients.

**B. Respondent acted knowingly and intentionally.**

Respondent's actions were not the result of simple negligence or mistake. The ABA Standards for Imposing Lawyer Sanctions defines "knowledge" as the "conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result."

**C. Mitigating factors**

Mitigating 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 mitigating factors in a lawyer disciplinary proceeding ‘are any considerations, or factors that may justify a decrease in the degree of discipline to be imposed.’” Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 579 S.E. 2d 550, (2003) *quoting* ABA Model Standards for Imposing Lawyer Sanctions, 9.21 (1992).

Respondent expressed remorse at the hearing and the same is clearly a mitigating factor. Moreover, it is not disputed that Respondent’s father, the Honorable Justice Joseph P. Albright, was gravely ill for a period of several months and ultimately, and quite unfortunately, died on March 21, 2009. Respondent experienced personal and emotional problems as a result of the same. However, despite the tragic immeasurable loss of his father, Respondent’s problems with the enumerated clients and the Office of Disciplinary Counsel both pre-existed any illness of his father and continued after his father’s death.

**D. Aggravating factors**

There are several aggravating factors present in this case. Rule 9.22(a) of the ABA Model Standards for Imposing Lawyer Sanctions also recognizes that prior disciplinary action is an aggravating 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.'" Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 579 S.E. 2d 550, 557(2003) *quoting* ABA Model Standards for Imposing Lawyer Sanctions, 9.21 (1992).

Rule 9.22(a) of the ABA Model Standards notes that prior disciplinary offenses is an aggravating factor and Respondent's prior disciplinary case (Lawyer Disciplinary Board v. Joseph P. Albright, Jr., No. 33116) also involved his failures to respond to Disciplinary Counsel concerning a complaint involving allegations of his failure to respond to his clients. Respondent was reprimanded, ordered to finalize the estate matter and provide written updates to ODC documenting his progress on the same, and was ordered to pay costs of the proceeding. Moreover, despite being ordered to do so by this Order, ODC was forced to file a petition for a Rule to Show Cause against Respondent for his failures to honor the provisions of the January 2007 Order. *See* State ex rel. Office of Disciplinary Counsel v. Albright, 690 S.E.2d 113 (2009).

There are other aggravating factors present in this case. Rule 9.22(c) of the ABA Model Standards for Imposing Lawyer Sanctions indicates that a pattern of misconduct also constitutes an aggravating factor. Respondent has exhibited a pattern and practice of failing to communicate with his clients and has exhibited a pattern and practice of failing to respond to lawful requests from the Office of Disciplinary Counsel. Pursuant to 9.22(e) of the ABA Model Standards, the failure to cooperate in the investigation of disciplinary proceedings should also be viewed as an aggravating factor. The Scott Court noted that the ABA Model

Standards for Imposing Lawyer Sanctions 9.22(d) has 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 enumerated Rules and these violations include the same infractions he committed in his earlier disciplinary proceeding.

Additionally, Respondent has practiced law since 1988 and thus has substantial experience in the practice of law and the same is an aggravating factor pursuant to Rule 9.22(I) of the ABA Model Standards for Imposing Lawyer Sanctions. *See also* Lawyer Disciplinary Board v. Ball, 219 W.Va. 296, 633 S.E.2d 241 (2006).

Finally, pursuant to Rule 8.2 of the ABA Model Standards for Imposing Lawyer Sanctions, “[s]uspension is generally appropriate when a lawyer has been reprimanded for the same or similar 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”. More important, the Respondent was directed to file his findings of fact and conclusions of law by the 3<sup>rd</sup> day of May 2010. To date, he has failed to file any response.

#### **IV. RECOMMENDED SANCTIONS**

The evidence establishes by clear and convincing proof that Respondent has violated the Rules of Professional Conduct. Therefore, for the reasons set forth above, the Disciplinary Counsel recommends the following sanctions:

1. That Respondent be suspended from the practice of law for a period of three (3) months;

2. That Respondent be required to petition for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure;
3. That prior to petitioning for reinstatement, Respondent pay restitution to:
  - A. Complainant David A. Samuels in the amount of \$600.00; and
  - B. Complainant Jennifer Cooper in the amount of \$1,200.00.
4. That, upon reinstatement, Respondent's practice be supervised for a period of two (2) years;
5. That Respondent complete nine (9) hours of CLE in ethics, specifically in office management, in addition to such ethics hours he is otherwise required to complete to maintain his active license to practice, said additional nine (9) hours to be completed before he is reinstated;
6. 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; and
7. That Respondent be required to meet with a licensed psychologist who is previously approved by the Office of Disciplinary Counsel and follow whatever recommendations are made by said psychologist.

*Respectfully submitted,*  
The Lawyer Disciplinary Board  
By counsel



Rachael L. Fletcher Cipoletti [Bar No. 8806]  
Chief Lawyer Disciplinary Counsel  
2008 Kanawha Boulevard, East  
Charleston, West Virginia 25311  
(304) 558-7999  
(304) 558-4015 facsimile

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**CERTIFICATE OF SERVICE**

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This is to certify that I, Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, have this day, the 18<sup>th</sup> day of October, 2010, served a true copy of the foregoing **"Brief of the Lawyer Disciplinary Board"** upon Respondent Joseph P. Albright, Jr., by mailing the same via United States Mail, with sufficient postage, to the following address:

Joseph P. Albright, Jr., Esquire  
101 Third Street  
Parkersburg, West Virginia 26101

  
Rachael L. Fletcher Cipoletti