35283

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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

LAWYER DISCIPLINARY BOARD,

Complainant,

v. **No. 35283**

JOHN A. GRAFTON,

Respondent.

BRIEF OF THE LAWYER DISCIPLINARY BOARD

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

I. NATURE OF PROCEEDINGS AND RECOMMENDED DECISION OF THE HEARING PANEL SUBCOMMITTEE 1

II. STANDARD OF REVIEW 3

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW 4

IV. DISCUSSION 12
- A. Respondent violated duties to his clients, to the public, to the legal system and to the legal profession 13
- B. Respondent acted intentionally and knowingly 13
- C. The amount of potential injury and real injury is great 14
- D. Mitigating Factors. 14
- E. Aggravating Factors 15

V. RECOMMENDED SANCTIONS 17

TABLE OF AUTHORITIES

Cases:

Committee on Legal Ethics v. Blair
174 W.Va. 494, 327 S.E.2d 671 (1984) 4

Committee on Legal Ethics v. Karl
192 W.Va. 23, 449 S.E.2d 277 (1994) 4

Committee on Legal Ethics v. McCorkle
192 W.Va. 286, 452 S.E.2d 377 (1994) 3, 4

Committee on Legal Ethics v. Roark
181 W.Va. 260, 382 S.E.2d 313 (1989) 18

Committee on Legal Ethics v. Walker
178 W.Va. 150, 358 S.E.2d 234 (1987) 17

Committee on Legal Ethics v. White
189 W.Va. 135, 428 S.E.2d 556 (1993) 17

Daily Gazette v. Committee on Legal Ethics
174 W.Va. 359, 326 S.E.2d 705 (1984) 17

In re Disciplinary Proceedings Against Carroll
283 Wis.2d 115, 700 N.W.2d 1 (Wisconsin 2005) 19

Lawyer Disciplinary Board v. Albright
____ S.E.2d ___, 2011 WL 509215 (2011) 18

Lawyer Disciplinary Board v. Ball
219 W.Va. 296, 633 S.E. 2d 241 (2006) 17

Lawyer Disciplinary Board v. Cunningham
195 W.Va. 27, 464 S.E.2d 181 (1995) 4

Lawyer Disciplinary Board v. Friend
200 W.Va. 368, 489 S.E.2d 750 (1997) 18

Lawyer Disciplinary Board v. Hardison
205 W.Va. 344, 518 S.E.2d 101 (1999) 17

Lawyer Disciplinary Board v. Keenan
208 W.Va. 645, 542 S.E.2d 466 (2000) 18

Lawyer Disciplinary Board v. McGraw
194 W.Va. 788, 461 S.E.2d 850 (1995) 3

Lawyer Disciplinary Board v. Scott
213 W.Va. 209, 579 S.E. 2d 550 (2003) 15, 16

Lawyer Disciplinary Board v. Taylor
192 W.Va. 139, 451 S.E.2d 440 (1994) 12

Office of Disciplinary Counsel v. Jordan
204 W.Va. 495, 513 S.E.2d. 722 (1998) 12

Roark v. Lawyer Disciplinary Board
207 W.Va. 181, 495 S.E.2d 552 (1997) 3

West Virginia Statutes and Rules:

R. Law Disc. Proc. Rule 2.5 9

R. Law Disc. Proc. Rule 3.7 3

R. Law Disc. Proc. Rule 3.15 3

R. Law Disc. Proc. Rule 3.16 . . . . . 14, 15

R. Law Disc. Proc. Rule 3.32 2

R. Professional Conduct Rule 1.3 . . . . . 2, 10

R. Professional Conduct Rule 1.4(a) 2, 10

R. Professional Conduct Rule 1.4(b) 2, 10

R. Professional Conduct Rule 3.2 . . . . . 2, 10

R. Professional Conduct Rule 3.4 . . . . . 2, 10

R. Professional Conduct Rule 8.1(b) 2, 12

R. Professional Conduct Rule 8.4(c) 2, 11

R. Professional Conduct Rule 8.4(d) 2, 11

Other:

ABA Model Standards for Imposing Lawyer Sanctions, § 4.42 18

ABA Model Standards for Imposing Lawyer Sanctions, § 8.2 17

ABA Model Standards for Imposing Lawyer Sanctions, § 9.21 16

ABA Model Standards for Imposing Lawyer Sanctions, § 9.22(a) 15, 16

ABA Model Standards for Imposing Lawyer Sanctions, § 9.22(c) 16

ABA Model Standards for Imposing Lawyer Sanctions, § 9.22(d) 16

ABA Model Standards for Imposing Lawyer Sanctions, § 9.22(e) 16

ABA Model Standards for Imposing Lawyer Sanctions, § 9.22(I) 17

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

This is a disciplinary proceeding against Respondent John A. Grafton, (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 23, 2009. The Statement of Charges was served upon him by certified mail on or about November 3, 2009. Respondent failed to file an Answer to the Statement of Charges, and on December 15, 2009, 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 granted by the Hearing Panel Subcommittee at the prehearing held on February 12, 2010.

This matter proceeded to hearing in Charleston, West Virginia, on February 23, 2010. The Hearing Panel Subcommittee was composed of Pamela D. Tarr, Esquire, Chairperson; Paul T. Camilletti, Esquire; and Mr. Larry A. Stricker, layperson. Jessica H. Donahue, Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. Respondent appeared *pro se*. The Hearing Panel Subcommittee heard testimony from Wendy E. Greve, Esquire, Complainant Cheryl Ann Briscoe and Respondent. In addition, ODC Exhibits 1-11 were admitted into evidence. The Hearing Panel Subcommittee ordered Disciplinary Counsel to obtain the following information, if it exists: (1) a copy of the transcript for a hearing held on July 6, 2006; (2) a copy of the transcript of the hearing on the Motion for

Summary Judgment; and (3) a complete copy of the appeal for Ms. Briscoe's case filed with the Supreme Court of Appeals of West Virginia. A copy of the transcript for the Summary Judgment Motion hearing was provided to the Hearing Panel on March 22, 2010 as ODC Exhibit 12. The other items do not exist.

On April 19, 2010, and based upon the evidence and the record, the Office of Disciplinary Counsel submitted Findings of Fact, Proposed Conclusions of Law, and Recommended Sanctions regarding the final disposition of this matter to the Hearing Panel Subcommittee of the Lawyer Disciplinary Board.

On or about November 1, 2010, the Hearing Panel Subcommittee issued its decision in this matter and filed with the Supreme Court of Appeals of West Virginia its "Report of the Hearing Panel Subcommittee" (hereinafter "Report"). The Hearing Panel Subcommittee properly found that the evidence established that Respondent violated Rules 1.3, 1.4(a), 1.4(b), 3.2, 3.4, 8.1(b), 8.4(c) and 8.4(d) of the Rules of Professional Conduct.

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 one (1) year;
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 reinstatement, Respondent be ordered to undergo a psychiatric/psychological evaluation and follow any treatment protocol recommended by the evaluating psychiatrist/psychologist;

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 as 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: and

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.

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

Complaint of Cheryl Ann Briscoe
I. D. No.: 09-05-148

1. John A. Grafton ("Respondent" herein) is a lawyer practicing in Winfield, Putnam 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 October 2, 1995.

2. In 2003, Cheryl Ann Briscoe ("Complainant" herein) hired Respondent to represent her in a personal injury suit against an individual and her insurance company. On October 7, 2004, the case was filed against Diane K. Crouch, a/k/a Diane K. Fitzsimmons in the Circuit Court of Putnam County, West Virginia. The case, Civil Action No. 04-C-372, was assigned to the Honorable Edward Eagloski, II, Judge.

3. On or about February 16, 2005, the Defendant, by her counsel Mark L. Garren, served "Defendant Diane K. Crouch, a/k/a Diane K. Fitzsimmons' Interrogatories and Request for Production of Documents to Plaintiffs." Answers and responses to the Interrogatories and Request for Production were due to be served on March 21, 2005.

4. On or about March 10, 2005, Judge Eagloski sent a letter to Respondent advising that a Scheduling Conference had been set for April 14, 2005 at 10:00 a.m. and that serving a Notice of Scheduling Conference was the responsibility of the Plaintiff. On or about March 11, 2005, Respondent sent a Notice of Scheduling Conference to Complainant and Mr. Garren.

5. On or about April 14, 2005, after the Scheduling Conference, the Court entered a Scheduling Order requiring that Complainant's fact witnesses be disclosed by June 15, 2005, that Complainant's expert witnesses be disclosed by August 15, 2005, that any independent medical examination of Complainant be conducted by November 14, 2005, and that all discovery be completed by February 10, 2006. Respondent failed to file either fact witness or expert witness disclosures on behalf of Complainant.

6. On or about August 15, 2005, Wendy Greve was substituted as counsel for Defendant. On or about August 10, 2005, Ms. Greve sent a letter to Respondent inquiring about the status of Complainant's responses to the Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiffs. Ms. Greve asked Respondent to contact her to discuss the outstanding discovery and informed Respondent that if he did not contact her by August 24, 2005, she would file a Motion to Compel with the Court.

7. On or about October 12, 2005, Ms. Greve filed a Motion to Compel Complainant to Answer Defendant's Discovery. At the same time, Ms. Greve filed "Defendant's First Requests for Admission Directed to Plaintiff' and "Defendant Diane Fitzsimmons' Disclosure of Expert Witnesses." Respondent failed to file responses on behalf of Complainant to Defendants' Requests for Admissions.

8. On or about November 15, 2005, Ms. Greve filed a "Motion to Continue I.M.E. Deadline." The Motion to Continue I.M.E. Deadline stated that one of the reasons for the Motion was Complainant's failure to provide any answers or responses to Defendant's First Set of Interrogatories and Request for Production of Documents.

9. On or about July 10, 2006, Ms. Greve filed "Defendant's Motion for Summary Judgment and Memorandum of Law in Support Thereof." The Motion for Summary Judgment was based in part on Complainant's failure to respond to Defendants' Requests for Admissions. Respondent filed no written response to Defendant's Motion for Summary Judgment.

10. On or about July 14, 2006, Respondent was in a motor vehicle accident and suffered serious injuries that ultimately resulted in the amputation of Respondent's left foot on March 20, 2007. Attorney Richard Holtzapfel agreed to assist Respondent with Complainant's case while Respondent was recovering from his accident.

11. On January 12, 2007, a hearing was held in the Circuit Court of Putnam County, West Virginia regarding the case. Mr. Holtzapfel appeared on behalf of Complainant and Ms. Greve appeared on behalf of the Defendant. A Motion for Summary Judgment was argued on that day, and the parties were ordered to prepare Proposed Findings of Fact and Conclusions of Law. Mr. Holtzapfel informed Respondent of the Order requiring preparation of Proposed Findings of Fact and Conclusions of Law. On February 2, 2007, Respondent provided the Court with a proposed Order denying the Motion for Summary Judgment.

12. On February 12, 2007, Judge Eagloski signed an Order granting Defendant's Motion for Summary Judgment and dismissing Complainant's case. The Order Granting Summary Judgment relied in part on Complainant's failure to respond to Defendants' Requests for Admissions.

13. On June 14, 2007, July 13, 2007, and August 6, 2007, Judge Eagloski entered Orders prepared by Respondent that extended the time for Complainant to appeal the February 12, 2007 Order Granting Summary Judgment. The extensions were granted due to medical complications from Respondent's July 14, 2006 automobile accident.

The August 6, 2007 Order, the last extension sought by Respondent, gave him until August 17, 2007 to file an appeal of the Order Granting Summary Judgment.

14. On August 17, 2007, Respondent filed a "Petition for Appeal" in the Putnam County Circuit Clerk's office, which failed to include a designation of record, a docketing statement, the requisite number of copies required for filing, or the fee to process an appeal.

15. On September 28, 2007, the Putnam County Circuit Clerk's office sent Respondent a certified letter regarding his failure to file the proper paperwork for the appeal. The Putnam County Circuit Clerk informed Respondent that the appeal could not be processed until the necessary requirements were met.

16. The certified letter to Respondent from the Putnam County Circuit Clerk was signed for by W. Reed, an agent of Respondent, on October 9, 2007.

17. No further action was taken by Respondent to appeal Judge Eagloski's Order Granting Summary Judgment.

18. From August 2007 to January 2009, Complainant called Respondent on a regular basis to inquire about the status of her appeal. During this sixteen-month period, Complainant was informed by Respondent's office that the appeal was pending. Complainant stated Respondent would not return her phone calls and would not appear for appointments that she scheduled with his office.

19. In January 2009, Complainant learned for the first time during a phone call with the Putnam County Circuit Clerk' office that an appeal had not been perfected in her case.

20. On March 17, 2009, Complainant filed her complaint against Respondent with the Office of Disciplinary Counsel

21. On March 20, 2009, Lawyer Disciplinary Counsel forwarded the complaint to Respondent and, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure, requested that Respondent file a verified response thereto within twenty (20) days of receipt of the complaint.

22. Respondent failed to reply to Disciplinary Counsel's request of March 20, 2009. On May 1, 2009, Lawyer Disciplinary Counsel sent a second letter to Respondent, by certified U.S. Mail, directing that he file his verified response by May 11, 2009. The letter was received and signed for by Respondent on May 4, 2009.

23. On May 12, 2009, Respondent contacted the Office of Disciplinary Counsel (hereinafter "ODC") and stated that he would send the response by Friday, May 15, 2009. Respondent failed to reply to Disciplinary Counsel's request of May 1, 2009, and did not submit a response as indicated during his May 12, 2009 telephone call to Disciplinary Counsel.

24. On or about May 20, 2009, Disciplinary Counsel requested and obtained a subpoena for Respondent compelling him to appear for a sworn statement at ODC on June 23, 2009, and to bring his complete file pertaining to Complainant. Said subpoena was served upon Respondent by the Putnam County Sheriff's Office on May 27, 2009.

25. Respondent failed to appear for his sworn statement at ODC on June 23, 2009.

26. On January 8, 2010, Respondent filed a Chapter 13 Bankruptcy in the United States District Court for the Southern District of West Virginia.

27. Because Respondent failed to act with reasonable diligence and promptness in fully and properly responding to discovery requests, in complying with the Court's Scheduling Order, and in preparing and filing a valid Petition for Appeal in Cheryl Ann Briscoe, et al. v. Diane K. Crouch, et al., Civil Action No. 04-C-372 (Circuit Court of Putnam County, West Virginia), , Respondent violated Rules 1.3, 3.2, and 3.4 of the Rules of Professional Conduct, which provide 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.
>
> **Rule 3.4. Fairness to opposing party and counsel.**
> A lawyer shall not (d) in pretrial procedure, . . . fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

28. Because he repeatedly failed to adequately communicate with his client and repeatedly failed to keep his client informed about the status of her case, including his failure to properly file a valid Petition for Appeal, Respondent has violated Rules 1.4(a) and 1.4(b) of the Rules of Professional Conduct, which provide as follows:

Rule 1.4. Communication.

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

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

29. Because Respondent concealed the fact from his client that he had failed to properly file and perfect an appeal of the Circuit Court's Order Granting Summary Judgment and dismissing her civil action, he violated Rule 8.4(c) 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.

30. Because Respondent failed to comply with discovery obligations and the Court's scheduling order, failed to preserve his client's appellate rights and concealed the fact that he failed to properly perfect an appeal, Respondent violated Rule 8.4(d) of the Rules of Professional Conduct, which provides as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

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

31. Because he has failed to respond to the requests of Lawyer Disciplinary Counsel made on March 20, 2009, and on May 1, 2009, and also failed to respond to a subpoena

delivered to his office, Respondent 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.

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 to his clients, to the public, to the legal system and to the legal profession

In this case, the evidence clearly establishes that Respondent did not diligently or promptly represent Ms. Cheryl Briscoe in her personal injury case. Respondent failed to respond to discovery requests from opposing counsel and failed to properly file an appeal. Various motions were filed by the opposing party in the underlying case regarding Respondent's failure to respond to discovery request. In addition to failing to file discovery, Respondent failed to file any response at all to the motions filed by opposing counsel. Moreover, a scheduling order had been entered providing certain deadlines for discovery. Respondent failed to meet any of those deadlines. When opposing counsel finally filed motions to compel discovery, Respondent's responses to discovery requests were nine (9) months overdue. After the case had been dismissed by the Circuit Court on Summary Judgment, Respondent received several extensions to file an appeal. However, Respondent failed to file a proper appeal and acknowledged at the hearing that he failed to pursue the appeal. [Hearing Transcript at 166].

B. Respondent acted intentionally and knowingly

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." The overwhelming evidence establishes that Respondent knowingly failed to respond to discovery requests, failed to communicate with his client, failed to properly file an appeal, and failed to respond

to the Office of Disciplinary Counsel. Opposing counsel sent Respondent a letter about his failure to provide discovery and had to file a Motion to Compel with the Circuit Court when Respondent failed to file responses to discovery requests. After the case was dismissed on summary judgment, Respondent attempted to file an appeal. The Putnam County Circuit Clerk even sent Respondent a certified letter about his failure to file the proper paperwork for the appeal and his agent signed the green card but Respondent failed to take any action in response to the Clerk's notification. Further, Respondent signed the green card for a certified letter from the Office of Disciplinary Counsel regarding the pending complaint to which he did not respond. Even after receiving a subpoena to attend a sworn statement at the Office of Disciplinary Counsel, Respondent failed to appear for that sworn statement.

C. The amount of potential and real injury is great

Respondent's failure to timely file discovery likely contributed in the dismissal of Ms. Briscoe's case. The real injury suffered by Ms. Briscoe is the fact that Respondent never filed her appeal and there was never any resolution to her case. Ms. Briscoe stated she felt like a "fool" after dealing with Respondent for eight (8) years without a resolution to her case and believed Respondent did not feel like fighting for her case. [Hearing Transcript at 83]. Furthermore, Ms. Briscoe still has reoccurring pain from the accident that lead to the filing of the lawsuit. [Hearing Transcript at 61-62].

D. 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 suffered an accident in July of 2006 wherein he suffered many injuries. After several months, Respondent had an infection in his left foot and was on bed rest for several months. This ultimately lead to the amputation of his left foot in March of 2007. However, despite the loss of his foot, Respondent's problems with clients and the Office of Disciplinary Counsel pre-existed any injury to his foot and continued after his injury.

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 are considered an aggravating factor and Respondent's prior disciplinary case (Lawyer Disciplinary Board v. John A. Grafton (Supreme Court No. 33153) involved his failure to respond to Disciplinary Counsel concerning a complaint involving allegations of his failure to respond to his clients. Respondent was reprimanded, ordered to complete an additional three (3) hours of continuing legal education, ordered to pay costs of the proceeding, and placed upon Court ordered supervised practice on June 10, 2008, for one (1) year. Respondent did not complete his one (1) year of supervision before this complaint was filed against him.

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 of Professional

Conduct and these violations include many of the same infractions he was found to have committed in his earlier disciplinary proceeding.

Additionally, Respondent has practiced law since 1995 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 importantly, Respondent was directed to file his findings of fact and conclusions of law by the 19th day of April, 2010. To date, he has failed to file any response.

V. RECOMMENDED SANCTIONS

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

"A sanction is to not only punish the attorney, but should also be designed to reassure the public confidence in the integrity of the legal profession and deter other lawyers from similar conduct." Syl. pt 2, Committee on Legal Ethics v. White, 189 W.Va. 135, 428 S.E.2d 556 (1993);. Syl. pt 3, Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d

234 (1987); Syl. pt. 5, Committee on Legal Ethics v. Roark, 181 W.Va. 260, 382 S.E.2d 313 (1989); Syl pt. 3, Lawyer Disciplinary Board v. Friend, 200 W.Va. 368, 489 S.E.2d 750 (1997); and Syl pt. 3, Lawyer Disciplinary Board v. Keenan, 208 W.Va. 645, 542 S.E.2d 466 (2000). For the public to have confidence in our disciplinary and legal systems, lawyers such as Respondent must be removed from the practice of law for a period of time. A severe sanction is also necessary to deter lawyers who may be considering or who are engaging in similar conduct.

Section 4.42 of the ABA Standards for Imposing Lawyer Sanctions provides that absent aggravating or mitigating circumstances, suspension is generally appropriate when (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. A fair and careful balancing of the factors in this case demonstrates that the multiple aggravating factors in this case clearly outweigh the single mitigating factor Respondent raised. The overwhelming evidence also establishes that Respondent's conduct has continued since his earlier reprimand and the next level of discipline must be issued to deter any further possible misconduct.

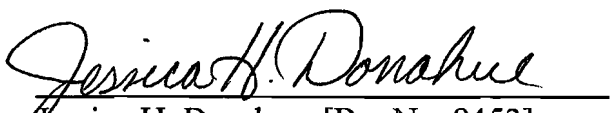
In the recent case of Lawyer Disciplinary Bd. v. Albright, ___ S.E.2d ___, 2011 WL 509215 (2011), this Court dealt with the issue of an attorney who had been previously reprimanded and was facing new charges regarding similar misconduct. This Court suspended that attorney for one (1) year for his repeated offenses. In addition, the State of Wisconsin suspended an attorney for one (1) year after a public reprimand for repeated

offenses. See, In re Disciplinary Proceedings Against Carroll, 283 Wis.2d 115, 700 N.W.2d 1 (Wisconsin 2005).

A review of the record clearly indicates that the Hearing Panel Subcommittee properly considered the evidence and made an appropriate recommendation to this Court. Furthermore, the Hearing Panel Subcommittee considered what little evidence Respondent offered in mitigation. However, it is clear that given Respondent's patterns of misconduct, multiple offenses and prior history of discipline, the recommended sanctions could have been much more severe.

Accordingly, the sanctions recommended by the Hearing Panel Subcommittee should be upheld.

Respectfully submitted,
The Lawyer Disciplinary Board
By Counsel



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CERTIFICATE OF SERVICE

This is to certify that I, Jessica H. Donahue, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 23rd day of February, 2011, served a true copy of the foregoing **"Brief of the Lawyer Disciplinary Board"** upon Respondent John A. Grafton by mailing the same via United States Mail, both certified and regular, with sufficient postage, to the following address:

John A. Grafton, Esquire
Grafton Law Office
3655 Winfield Road
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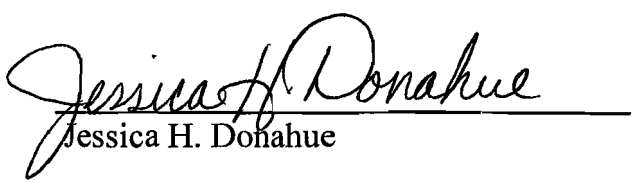

Jessica H. Donahue

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