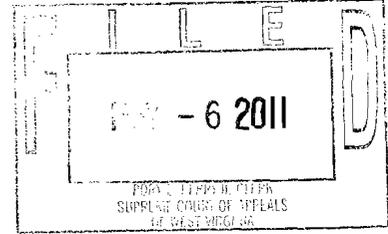


**BEFORE THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA**



LAWYER DISCIPLINARY BOARD,

Complainant,

v.

No. 35513

DENNIE S. MORGAN, JR.,

Respondent.

BRIEF OF THE LAWYER DISCIPLINARY BOARD

Jessica H. Donahue [Bar No. 9453]
Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
City Center East, Suite 1200C
4700 MacCorkle Avenue SE
Charleston, West Virginia 25304
(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 Dennie S. Morgan, 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 March 12, 2010. The Statement of Charges was served upon him by certified mail on or about March 16, 2010. Respondent failed to file an answer to the Statement of Charges. On May 17, 2010, Disciplinary Counsel filed "Disciplinary Counsel's Motion to Deem Admitted the Factual Allegations in the Statement of Charges" and "Motion to Exclude Testimony of Witnesses and Documentary Evidence or Testimony of Mitigating Factors". Respondent then filed his answer to the Statement of Charges on or about May 19, 2010. Disciplinary Counsel's motions were denied by the Hearing Panel Subcommittee at the prehearing held on June 9, 2010.

This matter proceeded to hearing in Beckley, West Virginia, on September 22, 2010. The Hearing Panel Subcommittee, comprised of J. Miles Morgan, Esquire, Chairperson; Debra A. Kilgore, Esquire; and Mr. Larry A. Stricker, layperson, presided over this matter. Jessica H. Donahue, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. Respondent appeared *pro se*. The Hearing Panel Subcommittee heard testimony from Keith D. Weatherly, Claude E. Weatherly, Jr., Treasa J. Neace, Naomi R. Staton, Timothy Paul Lupardus, and Respondent. Trampes Morgan's deposition was taken by the Office of Disciplinary Counsel and Respondent prior to the hearing and submitted as

Exhibit 35. In addition, ODC Exhibits 1-71, Respondent's Exhibits R1-R2, and Joint Exhibit 1 were admitted into evidence. Also entered into on that date were stipulations between ODC and Respondent wherein Respondent stipulated to all the violations of misconduct set forth in the Statement of Charges. Part of the stipulations were a recommendation of the sanctions to be imposed upon Respondent. On or about November 15, 2010, ODC filed its Proposed Findings of Fact, Conclusions of Law and Recommended Sanctions.

On or about January 20, 2011, 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), 1.5, 1.15(a), 1.16(d), 3.2, 8.1(b), 8.4(c) and 8.4(d) of the Rules of Professional Conduct. The Hearing Panel Subcommittee followed the recommended sanctions as listed in the stipulations entered into by ODC and Respondent.

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

- A. Respondent shall be reprimanded;
- B. Respondent shall refund the unearned fee referenced in Count I to Claude E. Weatherly, Jr. in the amount of Four Thousand Dollars (\$4,000.00); in Count II to Trampes E. Morgan in the amount of Six Hundred Sixty-Five Dollars and Fifteen Cents (\$665.15); in Count III to Treasa Neace in amount of Two Thousand Dollars (\$2,000.00), and in Count IV to Naomi Staton in the amount of One Thousand Dollars (\$1,000.00);

- C. 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. Respondent shall meet with his supervising attorney every two (2) weeks. The office practice plan shall be based upon the Report of Barron K. Henley, Esquire, and include the implementation of those proposed changes to Respondent's office management as suggest by Barron K. Henley's report. Respondent shall have Barron K. Henley review and evaluate his office practices as soon as practicable. 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;
- D. Respondent shall arrange for Barron K. Henley, Esquire to phone Respondent for an after care phone call three (3) months after the commencement of his supervised practice and prepare a written report to be submitted to ODC to ascertain the degree of progress of the changes to his law office management;
- E. Respondent shall arrange for Barron K. Henley, Esquire to phone Respondent for an after care phone call six (6) months after the commencement of his supervised practice and prepare a second written report to be submitted to ODC to ascertain the degree of progress of the changes to his law office management, and to ensure that any additional issues from the three (3) months report are adequately addressed;
- F. Respondent shall have his trust account audited for two (2) years and shall provide such audit to ODC;
- G. Respondent shall provide certification of his IOLTA to ODC;
- H. Pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, Respondent shall pay costs of this disciplinary proceeding.

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).

As to stipulations, the Supreme Court has found that “[s]tipulations or agreements made in open court by the parties in the trial of a case and acted upon are binding and a judgment founded thereon will not be reversed.” Syl. Pt. 3, Lawyer Disciplinary Board v. Cavendish, 226 W.Va. 327, 700 S.E.2d 779 (2010).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Dennie S. Morgan, Jr. is a lawyer practicing in Oceana, Wyoming 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 10, 2001.

COUNT I

Complaint of Claude E. Weatherly, Jr.

I. D. No: 08-01-179

2. On or about September 11, 2007, Keith Dale Weatherly was indicted in the Monroe County, West Virginia Circuit Court in Criminal Action Number 07-F-33. Attorney Justin St. Clair had been previously appointed as counsel for Mr. Weatherly and was re-appointed on or around September 30, 2007.
3. On or around October 27, 2007, Claude Weatherly, Jr. paid Respondent Four Thousand Dollars (\$4,000.00) to represent his son Keith Dale Weatherly in the criminal case.

4. On or about December 3, 2007, Attorney Justin St. Clair filed several motions in the criminal case on behalf of Keith Dale Weatherly.
5. On or about December 17, 2007, Respondent was substituted as counsel for Keith Dale Weatherly in the criminal case.
6. On or about February 26, 2008, Honorable Judge Robert A. Irons of the Monroe County, West Virginia Circuit Court set a status conference for March 3, 2008. The Order noted that Keith Dale Weatherly's "counsel failed to appear for a previously scheduled status conference" and "the Court made several attempts to contact the Defendant's attorney at his office to schedule a date for the conference, but has not received any feedback regarding possible dates that would be suitable."
7. On or about March 17, 2008, Respondent failed to appear for another status conference. By Order dated March 19, 2008, the Court rescheduled the status conference to April 7, 2008.
8. On or about April 11, 2008, Respondent and Claude Weatherly, Jr. met to discuss a full refund of the Four Thousand Dollars (\$4,000.00), paid to Respondent for representation of his son, Keith Dale Weatherly, in the criminal case because of Respondent's failure to attend several court appearances and Respondent's failure to communicate.
9. On or about April 11, 2008, Respondent provided Claude Weatherly with a check for Four Thousand Dollars (\$4,000.00) but on or about April 18, 2008, Respondent stopped payment on the check.

10. Sometime after March of 2008, but before June of 2008, Attorney Geoffrey Wilcher was appointed to represent Keith Dale Weatherly.
11. On or about June 13, 2008, Keith Dale Weatherly filed what the Court considered a *pro se* "Motion for Appointment of New Counsel."
12. On or about June 24, 2008, the Court entered "Order - Denying Motion for Appointment of New Counsel." The Order stated Keith Dale Weatherly "decided to hire his own private attorney, Dennis Morgan, Jr. Thereafter, retained counsel for the Defendant failed to show up for several hearings."
13. On or about July 7, 2008, Keith Dale Weatherly entered into a plea agreement with the State of West Virginia with counsel Geoffrey Wilcher.
14. On April 21, 2008, Claude Weatherly, Jr. filed his complaint against Respondent wherein he alleged the above conduct.
15. On or about June 8, 2009, Claude Weatherly, Jr. filed a "Civil Complaint" in the Raleigh County, West Virginia Magistrate Court under case number 09-C-777. The basis of the complaint was for the return of the Four Thousand Dollars (\$4,000.00) paid to Respondent for attorney's fees.
16. On July 9, 2009, default judgment was entered against Respondent in the civil action filed against him by Claude Weatherly, Jr. in Raleigh County, West Virginia Magistrate Court. The total judgement was for Four Thousand Two Hundred Twenty-Seven Dollars and Three Cents (\$4,227.03).

17. On or about October 27, 2009, Respondent filed a "Motion to Set Aside Order Granting Default Judgment," which was granted on by Order entered December 16, 2009.
18. On April 23, 2008, Disciplinary Counsel forwarded the complaint to Respondent by first class mail 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.
19. Respondent failed to reply to Disciplinary Counsel's request of April 23, 2008, and on May 21, 2008, Disciplinary Counsel sent a second letter to Respondent, by certified U.S. Mail, and directed that he file his verified response by June 3, 2008. The letter was received and signed for by Respondent on May 31, 2008. Respondent's response was received May 21, 2008.
20. On or about October 13, 2009, Disciplinary Counsel requested and obtained a subpoena duces tecum for Respondent compelling him to appear for a sworn statement on November 17, 2009, and to bring his complete file pertaining to Complainant. Said subpoena was served upon Respondent by the Wyoming County Sheriff's Department on October 19, 2009. The sworn statement was rescheduled to December 2, 2009, and taken on that date.
21. During the sworn statement, Disciplinary Counsel directed Respondent to provide a bill, accounting and/or invoice of the work he performed on the case. Respondent also stated that his operating account and IOLTA account were set up at First

Community Bank. Respondent also stated that he had a personal account at First Peoples Bank.

22. By letter dated December 3, 2009, Disciplinary Counsel reiterated the request for an invoice. Disciplinary Counsel gave Respondent until January 2, 2010, to provide the information.
23. On or about December 18, 2009, Disciplinary Counsel subpoenaed the accounts for "Dennie S. Morgan, Jr. Law Office Account and/or Dennie S. Morgan, Jr. Law Office (IOLTA) Trust Account" from First Community Bank in Oceana, West Virginia.
24. Respondent failed to reply to Disciplinary Counsel's request of December 3, 2009, Disciplinary Counsel sent a second letter to Respondent requesting the invoice on January 11, 2010. Disciplinary Counsel requested the information within ten (10) days from receipt of the letter.
25. On or about January 13, 2010, First Community Bank sent a letter asking for Respondent's social security number in order for them to determine if Respondent had bank accounts at that bank.
26. Respondent failed to reply to Disciplinary Counsel's request of January 11, 2010, and on January 20, 2010, Disciplinary Counsel sent a third letter to Respondent, by certified U.S. Mail, and directed that he provide the invoice within ten (10) days from receipt of the letter. The letter was returned as unclaimed on or about February 16, 2010.

27. On or about January 20, 2010, Disciplinary Counsel subpoenaed accounts for “Dennie S. Morgan, Jr.” from First Community Bank and included Respondent’s social security number within the subpoena.
28. On or about January 22, 2010, Disciplinary Counsel subpoenaed accounts for “Dennie S. Morgan, Jr.” from First Peoples Bank in Oceana, West Virginia. Disciplinary Counsel received a letter on or about January 22, 2010 from First Peoples Bank indicating that there no was bank account for Respondent at that bank.
29. On or about January 25, 2010, First Community Bank sent a letter indicating that there were no accounts listed as “Dennie S. Morgan, Jr. Law Office Account and/or Dennie S. Morgan, Jr. Law Office (IOLTA) Trust Account” at that bank.
30. On or about January 26, 2010, First Community Bank provided records for an account listed as “Dennie S. Morgan, Attorney” to Disciplinary Counsel.
31. Because Respondent failed to appear for several hearings, he failed to act with reasonable diligence and violated Rules 1.3 and 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.

32. Because Respondent accepted a fee for legal services, failed to provide those services, failed to otherwise return the unearned fee and instead converted the same to his own

use, Respondent has violated Rule 1.5(a), Rule 1.16(d), 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 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.

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.

33. Because Respondent failed to set up, maintain, and/or deposit Complainant's retainer into a separate account from his own property, Respondent has violated Rule 1.15(a) of the Rules of Professional Conduct which provides:

Rule 1.15. Safekeeping property.

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated as a "client's trust account" in an institution whose accounts are federally insured and maintained in the state where the lawyer's office is situated, or in a separate account elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safe guarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

34. Because he has failed to respond to the lawful requests of Disciplinary Counsel for information made on April 23, 2008 as well as after his sworn statement, 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.

COUNT II
Complaint of Trampes E. Morgan
I. D. No: 09-03-062

35. Around July of 2008, Trampes Morgan contacted Respondent about representation to regain parenting time with his child through the Braxton County, West Virginia Family Court. Respondent was paid Two Thousand Six Hundred Dollars (\$2,600.00).
36. At the beginning of the representation, Respondent would tell Mr. Morgan there was a court date. Respondent would then tell Mr. Morgan at the last minute that court had been laid over due to opposing party's counsel. Mr. Morgan stated this happened three (3) times.
37. After a while, Respondent failed to answer Mr. Morgan's phone calls or call Mr. Morgan back. Mr. Morgan also discovered that despite Respondent's representations nothing had been filed in court.
38. On February 3, 2009, Mr. Morgan filed his complaint against Respondent wherein he alleged the above conduct.
39. On or about October 23, 2009, Respondent filed "Petition for Visitation and Allocation of Custodial Responsibility" and "Proposed Permanent Parenting Plan" on behalf of Trampes Morgan. These documents were not verified by Mr. Morgan.
40. On or about December 10, 2009, a case management hearing was held wherein Respondent appeared on behalf of Trampes Morgan.
41. On February 3, 2009, Disciplinary Counsel forwarded the complaint to Respondent by first class mail 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.

42. Respondent failed to reply to Disciplinary Counsel's request of February 3, 2009, and on March 10, 2009, Disciplinary Counsel sent a second letter to Respondent, by certified U.S. Mail, and directed that he file his verified response by March 23, 2009. The letter was received and signed for by Respondent on March 12, 2009.
43. On or about March 24, 2010, Trampes Morgan participated in mediation wherein an agreement was reached regarding visitation and parenting time. Prior to mediation, Mr. Morgan was unable to exercise visitation and parenting time with his child. After mediation, Mr. Morgan and his ex-girlfriend began visitation and parenting time even before a written Order was signed by the Judge regarding the issue.
44. Respondent filed his reply on March 30, 2009.
45. On or about June 8, 2010, a "Final Order" was filed in the matter.
46. On or about September 17, 2010, Respondent provided his invoice for the work he performed for Trampes Morgan. The invoice was for a total of Two Thousand Thirty-Five Dollars and Eighty-Five Cents (\$2,035.85). The amount of the retainer that was unearned is Six Hundred Sixty-Five Dollars and Fifteen Cents (\$665.15).
47. Because he did not return communication from Mr. Morgan and he misrepresented to Mr. Morgan about hearings being set, Respondent violated Rule 1.4(a) and Rule 1.4(b) and Rule 8.4(c) 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.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

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

48. Because he failed to timely pursue Mr. Morgan's case, Respondent violated Rules 1.3 and 3.2 of the Rules of Professional Conduct as set forth above.
49. Because Respondent accepted a fee for legal services, failed to provide those services, failed to otherwise return the unearned fee and instead converted the same to his own use, Respondent has violated Rule 1.5, Rule 1.16(d), Rule 8.4(c) and 8.4(d) of the Rules of Professional Conduct as set forth above.
50. Because Respondent failed to set up, maintain, and/or deposit Complainant's retainer into a separate account from his own property, Respondent has violated Rule 1.15(a) of the Rules of Professional Conduct as set forth above.
51. Because he failed to respond to the Office of Disciplinary Counsel's request of February 3, 2009, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct as set forth above.

COUNT III
Complaint of Treasa Neace
I. D. No: 09-03-120

52. On or about March 29, 2006, Treasa Neace retained Respondent to represent her in a Wyoming County, West Virginia Family Court Civil Matter Number 06-D-108, Treasa Neace v. Millard Neace, and paid Respondent Five Thousand Dollars (\$5,000.00). From on or about April 3, 2006, to around the end of December, 2008, Respondent represented Ms. Neace in various hearings and filed various motions regarding the case.
53. On or about November 1, 2007, Ms. Neace paid Respondent an additional Three Thousand Dollars (\$3,000.00) for work done prior to the appeal.
54. On or about October 1, 2008, a final hearing was held in the divorce case.
55. On or about October 10, 2008, Ms. Neace attempted to contact Respondent by email about an appeal. On or about October 10, 2008, Respondent responded by emailing Ms. Neace the following language "hey just got it in front of judge this morning."
56. On or about October 16, 2008, Respondent signed a hand written document that stated "I, DJ Morgan, was paid \$2,000.00 towards the representation of Treasa Neace in her appeal of Family Case No. before Hon. Judge McGraw & Hon. John S. Hrko." The statement is marked "Paid in Full."
57. On or about December 2, 2008, the Honorable Judge H. Suzanne McGraw of the Wyoming County, West Virginia Family Court entered a Final Order in the divorce. The Order stated the parties had thirty (30) days to file an appeal.

58. On or about December 11, 2008, Ms. Neace attempted to contact Respondent by email about Respondent's failure to communicate with her. On or about December 26, 2008, Ms. Neace again attempted to contact Respondent by email.
59. On or about December 30, 2008, Ms. Neace filed a *pro se* appeal of the Final Order.
60. On or about January 29, 2009, Ms. Neace attempted to contact Respondent by email about a failed attempt at a meeting. Ms. Neace asked for her client file in this email as well.
61. On or about February 12, 2009, Ms. Neace again attempted to contact Respondent by email regarding his failure to communicate with her.
62. On or about February 17, 2009, Ms. Neace sent Respondent a certified letter informing Respondent about his dismissal as her counsel. The letter was returned to Ms. Neace on or about March 3, 2009.
63. On March 2, 2009, Ms. Neace filed her complaint against Respondent wherein she alleged the above conduct.
64. On March 3, 2009, Disciplinary Counsel forwarded the complaint to Respondent by first class mail 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. Respondent filed his response on April 8, 2009.
65. During his sworn statement on December 2, 2009, Disciplinary Counsel directed Respondent to provide a fee agreement and an invoice. By letter dated December 3,

2009, Disciplinary Counsel reiterated the request and gave Respondent until January 2, 2010, to provide the information.

66. Respondent failed to reply to Disciplinary Counsel's request of December 3, 2009 and Disciplinary Counsel sent a second letter to Respondent requesting the information on January 11, 2010. Disciplinary Counsel requested the information within ten (10) days from receipt of the letter.
67. Respondent failed to reply to Disciplinary Counsel's request of January 11, 2010, and on January 20, 2010, Disciplinary Counsel sent a third letter to Respondent, by certified U.S. Mail, and directed that he provide the retainer contract and invoice within ten (10) days of receipt of the letter. The letter was returned as unclaimed on or about February 16, 2010.
68. Because he failed to pursue Ms. Neace's appeal, Respondent violated Rules 1.3 and 3.2 of the Rules of Professional Conduct as set forth above.
69. Because he failed to communicate with Ms. Neace and lied about communication with the Court, Respondent violated Rule 1.4(a) and 8.4(c) as set forth above.
70. Because Respondent accepted a fee for legal services, failed to provide those services, failed to otherwise return the unearned fee and instead converted the same to his own use, Respondent has violated Rule 1.5, Rule 1.16(d), Rule 8.4(c) and 8.4(d) of the Rules of Professional Conduct as set forth above.

71. Because Respondent failed to set up, maintain, and/or deposit Complainant's retainer into a separate account from his own property, Respondent has violated Rule 1.15(a) of the Rules of Professional Conduct as set forth above.
72. Because he failed to respond to the Office of Disciplinary Counsel's request after his sworn statement, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct as set forth above.

COUNT IV
Complaint of Naomi Staton
I. D. No: 09-03-359

73. On or about October 3, 2008, Respondent was retained by Naomi Staton for representation to modify and enforce a final divorce order entered in the Wyoming County, West Virginia Family Court Civil Action No. 96-D-88, Naomi Ruth Staton v. James Franklin Graham.
74. From October of 2008 to February of 2009, Ms. Staton paid Respondent a total of One Thousand Dollars (\$1,000.00).
75. From October of 2008 to July of 2009, Ms. Staton called Respondent on a regular basis to inquire about the status of her case. Respondent would often tell Ms. Staton that various meetings were rescheduled and she did not need to appear at the meetings. Ms. Staton indicated Respondent would not return many of her calls. Further, when Ms. Staton questioned Respondent about the pension department not receiving anything, Respondent told her the "Judge at Pineville has not signed and sent it out."

76. On or about June 29, 2009, Ms. Staton checked with the Wyoming County, West Virginia Circuit Court and discovered nothing had been filed in her case.
77. On or about July 8, 2009, Ms. Staton sent Respondent a letter about Respondent's failure to be available to discuss the status of the case. The letter also stated that Ms. Staton no longer required Respondent's services and requested a return of her fees and client file.
78. On or about July 8, 2009, Ms. Staton filed "Civil Complaint" against Respondent in the Wyoming County, West Virginia Magistrate Court, Case No. 09-C-154, for Respondent's failure to perform legal services after she paid him One Thousand Dollars (\$1,000.00).
79. On July 16, 2009, Ms. Staton filed her complaint against Respondent wherein she alleged the above conduct.
80. On or about January 6, 2010, Ms. Staton's new counsel, Attorney Charles B. Mullins, II, filed "Petition to Modify and Enforce Final Divorce Order."
81. On July 23, 2009, Disciplinary Counsel forwarded the complaint to Respondent by first class mail 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.
82. Respondent failed to reply to Disciplinary Counsel's request of July 23, 2009, and on September 25, 2009, Disciplinary Counsel sent a second letter to Respondent, by

certified U.S. Mail, and directed that he file his verified response by October 8, 2009.

The letter was received and signed for by Respondent on September 29, 2009.

83. On or about October 13, 2009, Disciplinary Counsel requested and obtained a subpoena for Respondent compelling him to appear for a sworn statement at ODC on November 17, 2009, and to bring his complete file pertaining to Complainant. Said subpoena was serviced upon Respondent by the Wyoming County Sheriff's Department on October 19, 2009. The sworn statement was rescheduled to December 2, 2009, and taken on that date. Respondent filed his reply to the complaint on January 13, 2010.
84. On or about May 6, 2010, Ms. Staton was awarded default judgment against Respondent in the civil case filed against Respondent in the Wyoming County, West Virginia Magistrate Court for One Thousand and Eighty Dollars (\$1,080.00).
85. Because he failed to pursue Ms. Staton's case, Respondent violated Rules 1.3 and 3.2 of the Rules of Professional Conduct as set forth above.
86. Because he failed to communicate with Ms. Staton and misrepresented to Ms. Staton about the status of her case, Respondent violated Rule 1.4(a) and 8.4(c) as set forth above.
87. Because Respondent accepted a fee for legal services, failed to provide those services, failed to otherwise return the unearned fee and instead converted the same to his own use, Respondent has violated Rule 1.5, Rule 1.16(d), Rule 8.4(c) and 8.4(d) of the Rules of Professional Conduct as set forth above.

88. Because Respondent failed to set up, maintain, and/or deposit Complainant's retainer into a separate account from his own property, Respondent has violated Rule 1.15(a) of the Rules of Professional Conduct as set forth above.
89. Because he failed to respond to the Office of Disciplinary Counsel's requests for information of July 23, 2009, and September 25, 2009, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct as set forth above.

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*, Syl. 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 legal profession.

Lawyers owe duties of candor, loyalty, diligence and honesty to their clients. Members of the public should be able to rely on lawyers to protect their property, liberty, and their lives. Lawyers are officers of the court, and as such, must operate within the bounds of the law and abide by the rules of procedure which govern the administration of justice in our state. Furthermore, a lawyer's duties also include maintaining the integrity of the profession. The evidence in this case establishes by clear and convincing proof that Respondent violated his duties owed to his clients.

Respondent failed to diligently pursue Keith Dale Weatherly's criminal matter after being paid by Claude Weatherly, Jr. It took Respondent several months to enter his appearance in the case. During the time frame from when Respondent was paid until he made his official appearance, Keith Dale Weatherly's appointed counsel filed several motions on Mr. Weatherly's behalf. After entering his appearance in the case, Respondent then failed to file any motions or paperwork on Mr. Weatherly's behalf and failed to appear in Court. [Hearing Transcript at 15-18]. Respondent failed to advise Keith Dale Weatherly that Respondent would be unavailable to appear in court for hearings. [Hearing Transcript at 15-16]. Respondent even failed to respond to the Court's attempt to contact him about the missed hearings. [Hearing Transcript at 147-148]. Finally, after writing a check to Claude Weatherly, Jr., to refund the Four Thousand Dollars (\$4,000.00) Mr. Weatherly, Jr. had paid to him, Respondent stopped payment on the check thereby failing to refund unearned fees.

Furthermore, Claude Weatherly, Jr. had to file a civil suit seeking the funds, which resulted in default judgment against Respondent. [Hearing Transcript at 25-26].

Trampes Morgan hired Respondent to file a modification regarding child visitation. On several occasions, Respondent told Trampes Morgan that there had been a court date set but at the last minute, Respondent would contact Trampes Morgan and tell him that the Court had continued the hearing. [Exhibit 35, Deposition of Trampes Morgan at 15-16]. Respondent also failed to advise Trampes Morgan that his case had not been filed and lied to Trampes Morgan about the status of the case. [Exhibit 35, Deposition of Trampes Morgan at 13, 15-16]. Respondent then failed to answer or return Trampes Morgan's phone calls. [Exhibit 35, Deposition of Trampes Morgan at 14-15]. It took Respondent eight (8) months after Trampes Morgan filed his complaint with the Office of Disciplinary Counsel for Respondent to file anything in Trampes Morgan's case. [Exhibit 35, Deposition of Trampes Morgan at 27]. During that time, Trampes Morgan was unable to see his child. Respondent failed to return unearned fees to Trampes Morgan.

Respondent represented Treasa Neace in a divorce and custody matter in 2006. For several years, Respondent appeared to be involved in Ms. Neace's case. However, when hired in October of 2008 to appeal the final Order in the matter, Respondent failed to follow through with the appeal. Respondent misled Ms. Neace into believing an appeal was pending before the final Order was even entered by the Court. [Hearing Transcript at 54]. Respondent also failed to respond to Ms. Neace's emails about the appeal during the thirty (30) day appeal period. [Hearing Transcript at 56-58]. Ms. Neace ended up filing her own *pro se* appeal and Respondent ultimately failed to file the appeal that he alleged he had

prepared. [Hearing Transcript at 61, 68]. Respondent also failed to refund the money he received to represent Ms. Neace in the appeal. [Hearing Transcript at 69].

Respondent was hired by Naomi Staton to modify and enforce a final divorce Order. When Ms. Staton questioned Respondent about her case, Respondent would tell her that various meetings were scheduled and that she did not need to attend the meetings. [Hearing Transcript at 111, 114]. Respondent also failed to inform Ms. Staton that nothing had been filed in her case. [Hearing Transcript at 112]. Respondent also failed to refund unearned fees in this matter even after Ms. Staton filed a civil suit seeking recovery of the fees. [Hearing Transcript at 118]. Default judgment was entered against Respondent due to his failure to appear in the matter. [Hearing Transcript at 119].

Respondent also only had one (1) bank account which he used as his office account, his trust account, and his personal checking account. [Hearing Transcript at 144]. Respondent failed to adequately protect the funds of his clients. [Hearing Transcript at 184-185]. Further, Respondent violated his duties to the profession by failing to respond to requests for information from the Office of Disciplinary Counsel in all four (4) complaints.

B. Respondent acted negligently.

The evidence establishes that Respondent acted negligently in these matters. The ABA Standards for Imposing Lawyer Sanctions define negligence 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.

C. The amount of real injury and potential injury is great.

Respondent failed to appear in Keith Dale Weatherly's criminal case and failed to properly communicate with Keith Dale Weatherly which resulted in his criminal case being continued for several hearings. Keith Dale Weatherly continued to be incarcerated during his criminal matter during the time of Respondent's misconduct. Furthermore, Respondent failed to respond to any attempts by the Judge's office to contact him about the missed hearings. Respondent's actions could have lead to potential injury to Keith Dale Weatherly.

Respondent failed to be completely honest with Trampes Morgan about his case pending in court. It took an additional eight (8) months after Trampes Morgan filed his complaint with the Office of Disciplinary Counsel for Respondent to actually file any paperwork in Trampes Morgan's case. During that time, Trampes Morgan was unable to have visitation with his child. Therefore, Respondent's misconduct prevented Trampes Morgan from having any visitation with his child during the time that Trampes Morgan thought Respondent was pursuing his case.

Respondent failed to file an appeal in Treasa Neace's case which could have possibility limited her ability to challenge any of the rulings in her case. Respondent even failed to file an appeal that he testified that he had prepared which could have presented any possible issues in a better legal presentation than Ms. Neace's *pro se* petition for appeal. Respondent was not completely honest with Ms. Neace about how her case was proceeding. There was potential for injury by Respondent with Ms. Neace's appeal.

Respondent's failure to communicate with Naomi Staton led to a period of time wherein Ms. Staton was not aware that Respondent had failed to pursue her modification as

she had requested. As a result of Respondent's actions, there was a potential for injury in Ms. Staton's case.

In all of the complaints, Respondent failed to refund unearned fees in all of the complaints which created a potential for real injury. Respondent's misconduct, including the multiple instances of failing to respond to requests from Disciplinary Counsel for information about these complaints, has brought the legal system and legal profession into disrepute.

D. There are several aggravating factors present.

Aggravating factors are considerations enumerated under Rule 3.16 of the Rules of Lawyer Disciplinary Procedure for the Court to examine when considering the imposition of sanctions. Elaborating on this rule, the Scott Court held "that aggravating factors in a lawyer disciplinary proceeding 'are any considerations, or factors that may justify an increase in the degree of discipline to be imposed.'" Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 216, 579 S.E. 2d 550, 557 (2003) quoting *ABA Model Standards for Imposing Lawyer Sanctions*, 9.21 (1992).

Rule 9.22(c) of the *ABA Model Standards for Imposing Lawyer Sanctions* indicates that a pattern of misconduct constitutes an aggravating factor. Respondent has exhibited a pattern and practice of accepting retainer fees but then failing to carry out services; failing to communicate with his clients; and failing to respond to requests for information from the Office of Disciplinary Counsel during the investigation of multiple disciplinary complaints. While Respondent admittedly failed to respond to written communication from the Office of Disciplinary Counsel, he appeared for his sworn statement.

Additionally, the Scott Court noted that the *ABA Model Standards for Imposing Lawyer Sanctions* has also recognized “multiple offenses” as an aggravating factor in a lawyer disciplinary proceeding. Scott, 579 S.E.2d at 558. Respondent has committed multiple violations of the Rules. The multiple infractions committed by Respondent go to his integrity and fitness to practice law.

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). Respondent has been admonished by the Investigative Panel of the Lawyer Disciplinary Board in the past for his failure to properly communicate with his clients.

E. There are mitigating factors present.

The Scott Court also adopted mitigating factors in a lawyer disciplinary proceeding and stated that mitigating factors “are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.” Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 216, 579 S.E.2d 550, 557 (2003).

The following mitigating factors are present: absence of a selfish or dishonest motive and remorse. Respondent has been licensed to practice law in West Virginia since October 10, 2001, and has no prior discipline from the West Virginia Supreme Court of Appeals. The evidence does not suggest that Respondent had selfish or dishonest motive in these matters. Respondent has also expressed remorse for his misconduct.

V. SANCTION

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syllabus Pt. 3, *in part*, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984), *cited in* Committee on Legal Ethics v. Morton, 186 W.Va. 43, 410 S.E.2d 279, 281 (1991). In addition, discipline must serve as both instruction on the standards for ethical conduct and as a deterrent against similar misconduct to other attorneys. In Syllabus Point 3 of Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987), the Court stated:

In deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession.

Moreover, a principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Daily Gazette v. Committee on Legal

Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

Standard 4.43 of the *ABA Standards for Imposing Lawyer Sanctions* states that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. In addition, Standard 7.3 of the *ABA Standards for Imposing Lawyer Sanctions* states that a reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed a professional and causes injury or potential injury to a client, the public, or to the legal system. Even when little or no harm occurred, a public sanction helps educate the respondent lawyer and deter future violations.

In deciding an appropriate sanction, this Court must consider not only what sanctions would appropriately punish Respondent, but also whether the sanctions are adequate to serve as an effective deterrent to other members of the Bar and restore public confidence in the ethical standards of the legal profession. Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987). The parties assert that the Stipulated Discipline appropriately addresses these concerns.

The Supreme Court of Appeals of West Virginia has held that “failure to respond to written and oral requests from the state bar for information concerning disciplinary complaint warrants a public reprimand.” Committee on Legal Ethics v. Joseph R. Martin, 187 W.Va. 340, 419 S.E.2d 4 (1992). A public reprimand was also issued for conduct involving lack of diligence, lack of communication and failure to respond to disciplinary counsel in Lawyer Disciplinary Board v. Geraldine Roberts, 217 W.Va. 189, 617 S.E.2d 539 (2005). *See also*;

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(b) (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 and 8.1(b) (Unreported Case); Lawyer Disciplinary Board v. Michael V. Marlow, No. 31617 (WV 6/10/04): lawyer reprimanded for violations of Rules 1.3, 1.4 and 8.1(b) (Unreported Case). *But see*, Lawyer Disciplinary Board v. Joan A. Mooney, No. 33595 (WV 5/22/08): lawyer admonished for violations of 1.3, 1.4 and 8.1(b) (Unreported Case)

V. RECOMMENDED SANCTIONS

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 evidence Respondent offered in mitigation. However, it is clear that given Respondent's patterns of misconduct, multiple offenses and extensive prior history of discipline, the recommended sanctions could have been much more severe.

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syl.pt. 3, in part, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984), cited in Committee on Legal Ethics v. Morton, 186 W.Va. 43, 45, 410 S.E.2d 279, 281 (1991). Respondent, a lawyer with some experience, has demonstrated conduct which has fallen below the minimum standard for attorneys, and discipline must be imposed.

In the past this Court has looked to the overall history of the lawyer, including such things as prior wrongdoing and discipline, when determining what sanction to impose. Syl. pt. 5, Committee on Legal Ethics v. Tatterson (Tatterson II), 177 W. Va. 356, 352 S.E.2d 107 (1986) (prior discipline aggravating because it calls into question a lawyer's fitness to practice a profession imbued with the public's trust). Additionally, 9.22(a) of the *ABA Standards for Imposing Lawyer Sanctions* states that any prior discipline of an attorney should also be viewed as an aggravating factor.

Based on the foregoing, the Hearing Panel Subcommittee recommended the following sanctions:

- A. Respondent shall be reprimanded;
- B. Respondent shall refund the unearned fee referenced in Count I to Claude E. Weatherly, Jr. in the amount of Four Thousand Dollars (\$4,000.00); in Count II to Trampes E. Morgan in the amount of Six Hundred Sixty-Five Dollars and Fifteen Cents (\$665.15); in Count III to Treasa Neace in amount of Two Thousand Dollars (\$2,000.00), and in Count IV to Naomi Staton in the amount of One Thousand Dollars (\$1,000.00);
- C. 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. Respondent shall meet with his supervising attorney every two (2) weeks. The office practice plan shall be based upon the Report of Barron K. Henley, Esquire, and include the implementation of those proposed changes to Respondent's office management as suggested by Barron K. Henley's

report. Respondent shall have Barron K. Henley review and evaluate his office practices as soon as practicable. 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;

- D. Respondent shall arrange for Barron K. Henley, Esquire, to phone Respondent for an after care phone call three (3) months after the commencement of his supervised practice and prepare a written report to be submitted to ODC to ascertain the degree of progress of the changes to his law office management;
- E. Respondent shall arrange for Barron K. Henley, Esquire, to phone Respondent for an after care phone call six (6) months after the commencement of his supervised practice and prepare a second written report to be submitted to ODC to ascertain the degree of progress of the changes to his law office management, and to ensure that any additional issues from the three (3) months report are adequately addressed;
- F. Respondent shall have his trust account audited for two (2) years and shall provide such audit to ODC;
- G. Respondent shall provide certification of his IOLTA to ODC;
- H. Pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, Respondent shall pay costs of this disciplinary proceeding.

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

Respectfully submitted,
The Lawyer Disciplinary Board
By Counsel

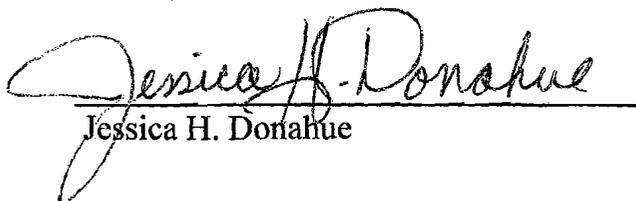


Jessica H. Donahue [Bar No. 9453]
Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
City Center East, Suite 1200C
4700 MacCorkle Avenue SE
Charleston, West Virginia 25304
(304) 558-7999
(304) 558-4015 *facsimile*

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 6th day of May, 2011, served a true copy of the foregoing "**Brief of the Lawyer Disciplinary Board**" upon Respondent Dennie S. Morgan, Jr., by mailing the same via United States Mail, both certified and regular, with sufficient postage, to the following address:

Dennie S. Morgan, Jr., Esquire
Post Office Box 502
Oceana, West Virginia 24870



Jessica H. Donahue