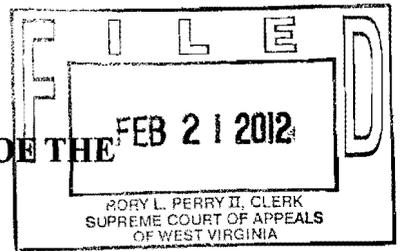


**BEFORE THE SUPREME COURT OF APPEALS OF THE  
STATE OF WEST VIRGINIA**



**LAWYER DISCIPLINARY BOARD,**

**Complainant,**

**v.**

**No. 11-1279**

**NORMAN L. FOLWELL,**

**Respondent.**

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**BRIEF OF THE LAWYER DISCIPLINARY BOARD**

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

This is a disciplinary proceeding against Respondent Norman L. Folwell, Esquire, (hereinafter "Respondent"), arising as the result of a reciprocal action initiated with the Supreme Court of Appeals of West Virginia on or about September 15, 2011. The Notice of Reciprocal Discipline was filed after receiving notice of the suspension of Respondent's law license by the State of Ohio.

On or about November 7, 2011, a Motion for Reciprocal Discipline was filed requesting that the Hearing Panel Subcommittee take action without conducting a formal hearing, pursuant to Rule 3.20(a) of the Rules of Lawyer Disciplinary Procedure, and refer this matter to the Supreme Court of Appeals with the recommendation that Respondent's law license be suspended for a period of two years. The Hearing Panel Subcommittee, composed of Debra A. Kilgore, Esquire, Chairperson, Paul T. Camilletti, Esquire, and Cynthia L. Pyles, presided over the matter.

On or about November 30, 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. In the Report, the Hearing Panel Subcommittee recommended that Respondent's law license be suspended for a period of two years with the second year stayed provided Respondent satisfied all conditions imposed, which was the same discipline assessed by the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.

## II. STANDARD OF REVIEW

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. McCorkle, Id.; 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. Respondent is a lawyer who was admitted to the West Virginia State Bar on October 9, 2003. As such, he is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.
2. On July 6, 2011, the Supreme Court of Appeals of Ohio entered a final Order whereby Respondent was suspended from the practice of law in Ohio for a period of two years, with the second year stayed on condition.<sup>1</sup>
3. This Order was entered as a result of a Report filed by the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio on or about December 23, 2010.
4. The Report was issued following a hearing held before the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio on October 15, 2010, pursuant to a seven-count complaint filed by Ohio Disciplinary Counsel on April 12, 2010.
5. In the Report, the following facts and violations of the Ohio Rules of Professional Conduct were found proven by clear and convincing evidence, listed by count:<sup>2</sup>

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<sup>1</sup> Respondent was admitted to the practice of law in the State of Ohio on November 18, 1991.

<sup>2</sup>At the October 15, 2010 hearing, Ohio Disciplinary Counsel and Respondent stipulated to the admission of facts, violations, aggravating and mitigating factors, recommended sanction and exhibits.

Count I - Phelps, Jr.

6. At all times relevant, Cash Phelps, Jr., (“Junior”) was a minor and the son of Cash Phelps, Sr., and Yolanda Ruble. Cash Phelps, Sr., and Ruble shared custody of Junior.
7. On November 8, 2007, Ruble hired Respondent to represent Junior against Allstate Insurance Company (“Allstate”) concerning injuries Junior sustained in a car accident on November 18, 2006.
8. At no time before or during Junior’s representation did Respondent consult with another attorney experienced in the representation of a juvenile client in a civil case.
9. Upon engagement, Respondent had Ruble execute a contingent fee agreement on Junior’s behalf under which Respondent would receive 33% of any amount Junior received from Allstate.
10. A year later, in the fall of 2008, Respondent settled Junior’s claim with Allstate for \$20,000.00 and in exchange, Ruble signed a waiver releasing Junior’s claim.
11. Respondent neither involved Junior’s father in the settlement negotiation process nor received permission from Junior’s father to settle Junior’s claim with Allstate.
12. On or about December 5, 2008, Respondent received a \$20,000.00 check made payable to Respondent and Junior.
13. On December 8, 2008, Respondent visited Junior, who was at the time incarcerated at a local juvenile facility, and had Junior endorse the \$20,000.00 settlement check.

14. The next day, December 9, 2008, Respondent deposited the \$20,000.00 settlement check into his IOLTA account.
15. On that day, Respondent, without court approval, withdrew from his IOLTA account \$6,600.00 of the settlement proceeds that reflected Respondent's 33% contingent fee. This left \$13,400.00 belonging to Junior in Respondent's IOLTA account.
16. During this time, Probate Judge Timothy Williams oversaw the local juvenile facility where Junior was held.
17. On December 10, 2008, during Judge Williams's scheduled visit to the facility where Junior was held, the staff advised Judge Williams that Respondent had visited Junior and had him endorse a settlement check even though Junior was still a minor.
18. That same day, Judge Williams contacted Respondent by telephone and had the following discussion:
  - a. Judge Williams informed Respondent that under Ohio law, Respondent could not settle a minor's claim without first filing an application for the probate court's approval.
  - b. Respondent advised Judge Williams that Respondent was unaware of the above procedural requirement for cases involving minors.
  - c. Judge Williams told Respondent about the forms needed for approval and instructed Respondent to go to the clerk's office by the next morning to get the forms.

- d. Judge Williams advised Respondent not to disburse any of the settlement proceeds until the probate court approved the settlement.
19. On December 17, 2008, Junior turned eighteen years old and became a legal adult.
20. Four months went by but Respondent did not file an application to approve the Phelps settlement.
21. On April 29, 2009, Judge Williams met with Respondent and Junior's parents to discuss Respondent's delay.
22. The following took place during the April 29, 2009 meeting:
- a. Respondent confirmed that he had not filed an application to approve the Phelps settlement.
  - b. Respondent informed Judge Williams that Respondent had disbursed \$6,600.00 of the settlement proceeds for attorney fees, pursuant to a contingent fee agreement.
  - c. Respondent confirmed that his fee had not been approved by the probate court.
  - d. Judge Williams advised Respondent that the Rules of Superintendence for the Courts of Ohio required probate court approval of contingent fee agreements and attorney fees in cases involving minors.
  - e. Respondent advised Judge Williams that Respondent was unaware of the above procedural requirements for cases involving minors.

23. On July 10, 2009, Respondent filed Junior's application for settlement approval with the probate court.
24. On July 24, 2009, Judge Williams held a hearing regarding the Phelps settlement.
25. By this time, Judge Williams indicated that he thought that he really did not have a choice in the matter because almost eight months earlier, Respondent had accepted and deposited the settlement check and had Ruble sign releases of Junior's claim. Therefore, Judge Williams indicated that he reluctantly approved the Phelps settlement and ordered Respondent to distribute the \$20,000.00 by July 31, 2009, as follows: \$13,659.14 to Junior, \$5,340.86 to Medicaid, and only \$1,000.00 to Respondent for attorney fees. Accordingly, Respondent was required to return \$5,600.00 of the fees he previously took.
26. On July 31, 2009, Respondent disbursed \$13,659.14 to Junior from Respondent's IOLTA account.
27. Respondent admitted that at least \$13,400.00 of the client funds in Respondent's IOLTA account between December 12, 2009 and July 31, 2009, belonged to Junior.
28. However, from January 5, 2009, to April 28, 2009, and May 18, 2009, to July 30, 2009, Respondent's IOLTA account balance was below \$13,400.00 by as much as \$6,232.34. This indicates that Respondent used Junior's client funds for Respondent's purposes or that of others for more than six months up until the day that the funds were distributed to Junior.

29. From February 1, 2007, to mid-December, 2009, Respondent neither maintained client ledgers as described by Rule 1.15(a)(2)(i)-(iv) of Ohio Rules of Professional Conduct nor reconciled his IOLTA account on a monthly basis.
30. Respondent's conduct in Count I violated Rule 1.1 (failing to provide competent representation); Rule 1.3 (failing to act with reasonable diligence and promptness in representing a client); 1.15(a)(2) (failing to maintain separate client ledgers for the funds in his trust account); Rule 1.15(a)(5) (failing to perform and retain a monthly reconciliation of the funds in his trust account); Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(h) (engaging in other conduct that adversely reflects on his fitness to practice law) of the Ohio Rules of Professional Conduct.

#### Count II - Crawford

31. Until August 11, 2006, Darrell Crawford was a real estate agent employed by real estate broker Harry Welch.
32. Pursuant to an agreement with the broker, Crawford claimed he would receive 60% of the commission paid to the broker for any real estate transaction in which Crawford was both the buyer's and the seller's agent.
33. On August 4, 2006, Crawford was involved with a real estate transaction for which he was to receive a 60% commission equaling \$11,160.00. However, the broker gave Crawford only \$5,800.00 and refused to pay the remaining portion.

34. To obtain the remainder of the commission, Crawford hired Respondent to represent him in or about August of 2006.
35. On August 6, 2006, Respondent sent a demand letter to the broker for which Crawford paid Respondent \$60.00.
36. The broker refused to give any additional funds to Crawford.
37. Over several months in 2006, Crawford paid Respondent a \$1,650.00 flat fee to file a lawsuit against the broker to recover the remainder of Crawford's commission.
38. Crawford's case remained unfiled and on December 2, 2006, the broker died.
39. That month, Crawford called Respondent to discuss how he could recover the commission now that the broker was dead.
40. During the conversation, Respondent told Crawford that once the broker's estate was opened in the probate court, he could file a claim against the estate and a lien against his property.
41. In August, 2007, the broker's estate was opened in the probate court and Crawford advised Respondent of this fact.
42. In response, Respondent told Crawford that one approach was for Respondent to file a claim against the broker's estate for Crawford. From this conversation, Crawford understood that Respondent would proceed to file the action.
43. On July 1, 2008, Crawford called the probate court and was informed that nothing had been filed on his behalf.

44. Crawford also called the county recorder's office and learned that the broker's property had been transferred in 2007 after the broker's death.
45. Crawford subsequently notified Respondent that he wanted a refund of his attorney fees.
46. On July 14, 2010, Respondent refunded Crawford his attorney fees of \$1,650.00.
47. Respondent's conduct in Count II violated Rule 1.3 (failing to act with reasonable diligence and promptness in representing a client); Rule 1.16(e) (failing to promptly refund any unearned fee upon withdrawal of representation); and Rule 8.4(h) (engaging in other conduct that adversely reflects on his fitness to practice law) of the Ohio Rules of Professional Conduct.

#### Count III - Hoover

48. On May 28, 2007, William Hoover met Respondent and discussed the possibility of Respondent assisting Hoover in obtaining grandparent visitation rights.
49. At that time, Hoover paid Respondent \$187.00 for the consultation and for a letter that Respondent sent to the attorney for Hoover's daughter, Angela Stoney, requesting visitation.
50. The daughter's attorney did not respond to Respondent's letter.
51. In November, 2007, Hoover contacted Respondent and asked him to proceed with a lawsuit.

52. Respondent told Hoover that before Respondent could get started, Hoover needed to pay a \$750.00 flat fee. Hoover paid Respondent \$750.00 on November 21, 2007.
53. Six days later, on November 27, 2007, Hoover contacted Respondent's office and left a message with Respondent's secretary that Respondent was not to proceed with the matter.
54. Within days, Hoover followed up with Respondent and Respondent indicated that he had received Hoover's message not to proceed.
55. At that time, Hoover asked Respondent to return the \$750.00 fee.
56. In response, Respondent agreed to refund at least a portion of the fee but failed to do so.
57. After three months, Hoover again contacted Respondent about a refund. Respondent again promised to refund at least a portion of the fee but failed to do so.
58. Hoover spoke with Respondent on at least two more occasions requesting a refund. Each time, Respondent promised a refund but failed to provide such.
59. Respondent finally refunded Hoover \$400.00 in attorney fees on July 14, 2010.
60. Respondent's conduct in Count III violated Rule 1.16(e) (failing to promptly refund any unearned fee upon withdrawal of representation); and Rule 8.4(h) (engaging in other conduct that adversely reflects on his fitness to practice law) of the Ohio Rules of Professional Conduct.

#### Count IV - Yates Estate

61. In May, 2008, Phillip Yates, Sr., died and was survived by his wife, Bessie Yates, and his son, Phillip Yates, Jr.
62. At the start of June, 2008, Bessie Yates hired Respondent to handle the probate case for the Estate of Phillip Yates, Sr. in exchange for a fee of approximately \$1,200.00, which was due at the competition of the case.
63. A year passed without Respondent filing the probate case.
64. Finally, in late June, 2009, Respondent had Bessie Yates come to Respondent's office to sign paperwork and provide the \$300.00 filing fee.
65. On July 13, 2009, Phillip Yates, Jr., contacted the Washington County Probate Court and verified that nothing had been filed concerning his father's estate.
66. On July 27, 2009, over a year after the representation began, Respondent finally filed the Yates probate case.
67. Respondent's conduct in Count IV violated Rule 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client) of the Ohio Rules of Professional Conduct.

#### Count V - Washington

68. On April 4, 2008, Diana Lee Washington met with Respondent to discuss the possibility of his representation in a post-divorce decree matter in Ohio as opposed to Philadelphia, Pennsylvania, where the divorce had been granted.

69. During the meeting, Respondent indicated that he might be able to help and that he would charge her a \$2,500.00 flat fee for the representation.
70. On April 4, 2008, Washington paid Respondent the \$2,500.00 fee.
71. Respondent subsequently advised Washington that he could not help her and that he would refund the majority of her fee, which was unearned.
72. Between that time and the beginning of December, 2008, Respondent did not refund Washington any amount.
73. It was not until July 14, 2010, that Washington was refunded the money.
74. Respondent's conduct in Count V violated Rule 1.16(e) (failing to promptly refund any unearned fee upon withdrawal of representation; and Rule 8.4(h) (engaging in other conduct that adversely reflects on his fitness to practice law) of the Ohio Rules of Professional Conduct.

#### Count VI - Martin Estate

75. On November 28, 2008, Donald Martin, Sr., died and was survived by two sons, Thomas Martin and Donald Martin, Jr.
76. On January 15, 2009, Thomas hired Respondent to transfer title to certain vehicles and later to handle the probate case for their father's estate.
77. Thomas paid Respondent \$300.00 on January 15, 2009, and \$200.00 on February 26, 2009, for the balance of the representation.

78. On February 26, 2009, Thomas met with Respondent at his office and provided Respondent with additional information for filing the estate.
79. In or about April of 2009, Thomas contacted Respondent by telephone and Respondent repeatedly assured Thomas that the probate case “was being taken care of.” Respondent made this misrepresentation despite the fact that Respondent had taken no additional steps to pursue the matter after gathering filing information from Thomas in late February.
80. In May of 2009, Thomas and Respondent had further communication on the status of the matter. Respondent learned during the conversation that Thomas believed that the estate had been filed in the probate court. Despite Respondent realizing that Thomas’ understanding of the case status was incorrect, Respondent did not clarify that no such filing had taken place, leading Thomas and his family to make further inquiry with the probate court in June of 2009.
81. Respondent continued to assure Thomas the matter was being handled, although Respondent had not taken any action on the case since meeting with Thomas in February. Respondent never filed the probate case for the Martin estate.
82. As a result, in early August of 2009, Thomas hired new counsel who filed the probate case for the Martin estate within one week.
83. In August, 2009, Respondent refunded the \$500.00 received from Thomas Martin.

84. Respondent's conduct in Count VI violated Rule 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and Rule 8.4(h) (engaging in other conduct that adversely reflects on his fitness to practice law) of the Ohio Rules of Professional Conduct.

#### Count VII - Fee Sharing with Nonlawyer

85. From September of 2006 to June of 2010, Respondent employed Jennifer Burdette as a secretary at his law office. Jennifer Burdette was not an attorney in the State of Ohio or in any other state or federal jurisdiction.

86. Burdette's net weekly salary was \$400.00, and her duties included greeting office visitors, answering the telephone, scheduling Respondent's appointments and typing documents.

87. During Burdette's employment, client Oliver Sprouse hired Respondent to handle a civil matter and agreed to pay Respondent a contingent fee for his representation.

88. After being retained by Sprouse, Respondent agreed to pay Burdette ten percent of Respondent's attorney fees in the Sprouse case.

89. Respondent subsequently settled Sprouse's case and on March 25, 2010, Respondent paid Burdette \$200.00, which reflected ten percent of the attorney fee in the case.

90. Respondent's conduct in Count VII violated Rule 5.4 (a) (a lawyer shall not share legal fees with a nonlawyer) of the Ohio Rules of Professional Conduct.

## West Virginia Disciplinary Proceedings

91. Respondent failed to advise the West Virginia Office of Disciplinary Counsel of his suspension in Ohio within ten (10) days as required by Rule 3.20(b) of the Rules of Lawyer Disciplinary Procedure. Instead, the Office of Disciplinary Counsel received a certified copy of the Order suspending Respondent from the Disciplinary Counsel of the Supreme Court of Ohio by letter dated July 20, 2011.
92. Said Order constitutes a final adjudication of misconduct constituting grounds for discipline of a lawyer within the meaning of West Virginia Lawyer Disciplinary Procedure Rule 3.20(a).
93. Pursuant to Rule 3.20(c) of the Rules of Lawyer Disciplinary Procedure, upon receiving notice that a lawyer who is a member has been disciplined in another jurisdiction, Disciplinary Counsel shall, following an investigation pursuant to these Rules, refer the matter to a Hearing Panel Subcommittee for appropriate action.
94. On September 15, 2011, the Office of Disciplinary Counsel sent Respondent a “Notice of Reciprocal Disciplinary Action Pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure.”
95. Paragraph 6 of that Notice advised Respondent that Disciplinary Counsel would request that the Hearing Panel Subcommittee impose the same sanction as Ohio pursuant to Rule 3.20(e) of the Rules of Lawyer Disciplinary Procedure and Paragraphs 5 and 7 of that Notice advised Respondent that if he intended to challenge

the validity of his Ohio sanction he must request a formal hearing and provide a copy of the record of the disciplinary proceedings in Ohio within thirty (30) days.

96. On or about September 20, 2011, the Supreme Court of Appeals of West Virginia sent a certified mailing of the "Notice of Reciprocal Disciplinary Action Pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure" to Respondent's last known address. The same was returned as "undeliverable" on or about October 7, 2011.
97. Respondent failed to respond, either verbally or in writing, to the Office of Disciplinary Counsel's "Notice of Reciprocal Disciplinary Action Pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure" within the thirty (30) day time period.
98. On or about November 7, 2011, the Office of Disciplinary Counsel moved that the Hearing Panel Subcommittee take action in this matter without conducting a formal hearing, and that it refer this matter to the Supreme Court of Appeals with the recommendation that the same discipline be imposed as was imposed by the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.
99. On or about December 1, 2011, the Hearing Panel Subcommittee filed with the Supreme Court of Appeals their Report in which it recommended that Respondent's law license be suspended in West Virginia for a period of two years with the second year stayed provided Respondent satisfied all conditions imposed, which was the

same discipline assessed by the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.

100. The Report of the Hearing Panel Subcommittee also stated that in as much as Respondent had not responded to the Notice of Reciprocal Disciplinary Action Pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure nor requested a hearing to challenge the validity of the Ohio Disciplinary Order, the Panel was compelled to refer this matter to the Supreme Court of Appeals with the recommendation that the same discipline be imposed as was imposed by the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.
101. Pursuant to Rule 3.20(e) of the Rules of Lawyer Disciplinary Procedure, the Hearing Panel Subcommittee shall refer reciprocal discipline matters to the Supreme Court of Appeals with the recommendation that the same discipline be imposed as was imposed by the foreign jurisdiction unless it is determined by the Hearing Panel Subcommittee that (1) the procedure followed in the foreign jurisdiction did not comport with the requirements of due process of law; (2) the proof upon which the foreign jurisdiction based its determination of misconduct is so infirm that the Supreme Court of Appeals cannot, consistent with its duty, accept as final the determination of the foreign jurisdiction; (3) the imposition by the Supreme Court of Appeals of the same discipline imposed in the foreign jurisdiction would result in

grave injustice; or (4) the misconduct proved warrants that a substantially different type of discipline be imposed by the Supreme Court of Appeals.

#### IV. DISCUSSION

Pursuant to Rule 3.20(a) of the Rules of Lawyer Disciplinary Procedure, the Order of the Supreme Court of Ohio which adopted the Report of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio and suspended Respondent from the practice of law in Ohio, conclusively establishes misconduct on the part of Respondent. The panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio found that the following aggravating factors were proven by clear and convincing evidence: a pattern of misconduct, multiple offenses, and dishonest or selfish motive.<sup>3</sup> The panel also found that the following stipulated factors were proven by clear and convincing evidence: absence of a prior disciplinary record and cooperation with disciplinary proceedings.

Respondent did not challenge the validity of the disciplinary order of Ohio or request a formal hearing be held before the Lawyer Disciplinary Board of the State of West Virginia. Thus, as the Hearing Panel Subcommittee did not determine that (1) the procedure followed in Ohio did not comport with the requirements of due process of law; (2) the proof upon which Ohio based its determination of misconduct was so infirm that the Supreme Court of Appeals cannot, consistent with its duty, accept as final the determination of the foreign

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<sup>3</sup> The aggravating factor of a dishonest or selfish motive was not stipulated by the parties in the underlying disciplinary proceeding.

jurisdiction; (3) the imposition by the Supreme Court of Appeals of the same discipline imposed in Ohio would result in a grave injustice; or (4) the misconduct proved warrants that a substantially different type of discipline be imposed by the Supreme Court of Appeals, they referred the matter to the Supreme Court of Appeals with the recommendation that the same discipline be imposed as was imposed by Ohio, as mandated by Rule 3.20(e) of the Rules of Professional Conduct.

Even taking into account Respondent's lack of participation and failure to report to the Office of Disciplinary Counsel, the recommended sanction in this matter appears to be consistent with the sanction ordered in several West Virginia cases. In Lawyer Disciplinary Board v. John A. Grafton, 227 W.Va. 579, 712 S.E.2d 488 (2011), the Supreme Court of Appeals suspended Respondent Grafton's license to practice law for a period of two (2) years after making the determination that Grafton failed to file an appeal for a client and also deceived his client by allowing her to believe for over a year past missing the deadline for the appeal that he was acting diligently and an appeal had been perfected in her case. The Grafton matter also contained the aggravating factors of prior disciplinary offenses, a pattern and practice of misconduct in his dealing with clients as well as the Office of Disciplinary Counsel, failure to cooperate in the investigation of disciplinary proceedings, and substantial experience in the practice of law.

In Lawyer Disciplinary Board v. Dennie S. Morgan, Jr., 228 W.Va. 114, 717 S.E.2d 898 (2011), the Supreme Court of Appeals ordered a suspension of Respondent Morgan's

law license for the failure to not only timely communicate with four of his former clients, but also to return their money for work he did not perform. Although Morgan's absence of selfish or dishonest motive; remorse; and the fact that Morgan had been licensed to practice law since only 2001 were taken into consideration as mitigating factors, the Supreme Court of Appeals stated, "based on the severity and number of instances of Mr. Morgan's misconduct as well as the financial, legal, and emotional impact his actions have had on his clients and the public, the only adequate discipline that would serve the public policy interests is a one-year suspension of Mr. Morgan's law license." Morgan, 228 W. Va. at 124, 717 S.E.2d at 908. A pattern and practice of accepting retainer fees but then failing to carry out services; failing to communicate with clients; failing to respond to requests for information from the Office of Disciplinary Counsel; multiple offenses; and prior disciplinary actions and a previous admonishment for failure to communicate with clients were taken into consideration as aggravating factors in Morgan.

Finally, in Lawyer Disciplinary Board v. Eugene M. Simmons, 219 W. Va. 223, 632 S.E.2d 909 (2006), the Supreme Court of Appeals concluded that Respondent Simmons failed to exercise reasonable diligence and promptness in representing his clients, failed to appear for court hearings on numerous occasions, failed to keep his clients reasonably informed about the status of their matters, and failed to explain necessary matters for his clients to make informed decisions constituting violations of Rules 1.3, 1.4(a), and 1.4(b) of

the West Virginia Rules of Professional Conduct and suspended Simmons' law license for twenty (20) days in addition to other sanctions.

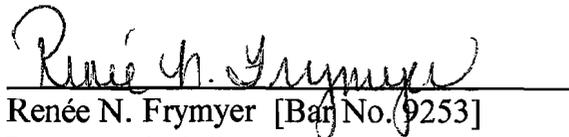
Section 4.42 of the *ABA Standards for Imposing Lawyer Sanctions* provides that absent aggravating or mitigating circumstances, suspension is generally appropriate when (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. Moreover, Section 4.5 of the *ABA Standards for Imposing Lawyer Sanctions* provides that suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he is not competent and causes injury or potential injury to a client.

It is noted, however, that because Respondent failed to notify the Office of Disciplinary Counsel of the disciplinary action in Ohio, such shall constitute an aggravating factor in any subsequent disciplinary proceeding. However, in reaching its recommendation as to sanction, the Hearing Panel Subcommittee properly considered the evidence, the facts and recommended sanction, the aggravating factors and mitigating factors and did not find that a different sanction than what was assessed by the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio warranted.

## V. CONCLUSION

The Lawyer Disciplinary Board requests that the reciprocal discipline recommended by the Hearing Panel Subcommittee of the Lawyer Disciplinary Board be adopted.

*Respectfully submitted,*  
The Lawyer Disciplinary Board  
By Counsel



Renée N. Frymyer [Bar No. 9253]  
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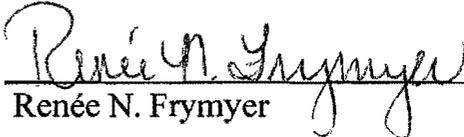
**CERTIFICATE OF SERVICE**

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This is to certify that I, Renée N. Frymyer, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 21<sup>st</sup> day of February, 2012, served a true copy of the foregoing "**Brief of the Lawyer Disciplinary Board**" upon Respondent Norman Lee Folwell, by mailing the same via United States Mail, both certified and regular, with sufficient postage, to the following address:

Norman L. Folwell, Esquire  
407 Second Street  
Marietta, Ohio 45750

  
\_\_\_\_\_  
Renée N. Frymyer