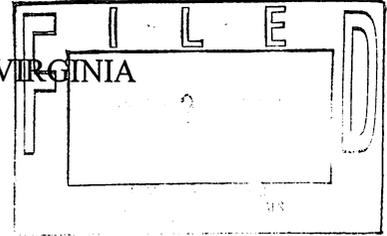


BRIEF FILED
WITH MOTION

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



LAWYER DISCIPLINARY BOARD,

Petitioner

vs.

No. 12-0005

JOHN P. SULLIVAN,

Respondent

RESPONDENT'S BRIEF

John Sullivan [Bar No. 6808]
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RULES

R. Professional Conduct Rule 1.3 2
R. Professional Conduct Rule 1.4 2
R. Professional Conduct Rule 8.1 2

The undersigned respondent, John Sullivan, has reviewed the brief filed by the Office of Disciplinary Counsel in this matter. The respondent agrees with the factual representations and legal arguments presented by the Office of the Disciplinary Counsel including the proposed sanctions in this matter. Due to the absence of dispute among the parties, the respondent asks that this brief be considered a summary response under Rule 10(e) of the Rules of Appellate Procedure.

I. STATEMENT OF THE CASE

The brief of Disciplinary Counsel provides a full statement of the case. The respondent asks the Court to adopt the facts as related in petitioner's brief. This pleading will provide a brief summary of the facts of the complaint, disciplinary proceeding, and recommendation of the disciplinary subcommittee.

This case arose from a complaint by Anthony White, a client of the respondent's in a felony criminal matter in Kanawha County Circuit Court. Mr. White plead guilty and was sentenced to one to five years in prison. A certified commitment order in the case contained a clerical order as to the effective sentence date. The result of this error was that Mr. White's parole eligibility date was incorrectly delayed for six months. Mr. White contacted the respondent attorney to correct this error. Respondent did not adequately review Mr. White's records to determine the error was made, did not respond to Mr. White's request in a timely or complete manner, and ultimately failed to identify the error or correct it in such a way that Mr. White would be properly credited for his time served. Mr. White was not released on parole until October 2011. If the record had been corrected pursuant to his request, he would have been eligible to apply for parole in April 2011.

Mr. White filed an ethics complaint against the respondent in August 15, 2011. Respondent did not respond in a timely manner or comply with requests for information.

The Subcommittee found that the respondent violated Rule 1.3, 1.4 and 8.1 of the Rules of Professional Conduct. Rule 1.3 states “a lawyer shall act with reasonable diligence and promptness in representing a client. Rule 1.4 states “(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 8.1 states that “a lawyer in connection with ... a disciplinary matter, shall not: (b) ... knowingly fail to respond to a lawful demand for information from ... disciplinary authority.”

The respondent stipulated at the time of the hearing that he violated those rules and acknowledges their violation in this brief.

The Hearing Panel Subcommittee recommended:

- a. That Respondent be issued a reprimand pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure;
- b. That Respondent will sign and follow a plan of supervised practice for a period of two years with a supervising attorney of Respondent's choice, said supervisor to be approved by the Office of Disciplinary Counsel and be available to respond to inquiries by the Office of Disciplinary Counsel;
- c. That Respondent shall complete an additional nine (9) hours of CLE during the 2012-2014 reporting period, specifically in the area of ethics and office management over and above that already required;

d. Pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, Respondent shall pay costs of this disciplinary proceeding.

II. ARGUMENT

The respondent requests that the Court impose the sanctions recommended by the Disciplinary Panel Subcommittee. Under the rules of Disciplinary Procedure and the precedent of this Court, a supervised practice agreement is an appropriate sanction which directly relates to and is designed to correct the pattern of behavior leading to the disciplinary action. The respondent recognizes that the Supreme Court of Appeals is the final arbiter of formal legal ethical charges. Syl. Pt. 3 Committee on Legal Ethics v. Blair, 174 W.Va. 494 (1984).

The recommendation of the subcommittee was based on the standards delineated by this Court in prior disciplinary matters. The relevant factors in those cases 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. Lawyer Disciplinary Board v. Taylor, 192 W.Va. 139 (1994).

Undersigned respondent is an Assistant Public Defender with the Kanawha County Office of the Public Defender and has been employed with that office since 2002. The respondent was also employed by the Kanawha County Public Defender from 1994-1997 and 1998 to 2000. This matter has been discussed with the management of the Public Defender Office and Chief Defender George Castelle. The Public Defender Office has agreed to supervise the respondent in a supervised practice and has

implemented the conditions of the supervised practice. The Supervising Lawyer will be Diana Panucci, Managing Deputy Public Defender.

The Kanawha County Public Defender Office is well suited to a supervised practice agreement for a number of reasons. All cases are assigned by management, the office maintains an electronic calendar for all scheduled hearings, lawyers are required to be at work during regularly scheduled hours with any leave time approved in advance. Concerns and complaints from clients are regularly referred to office management for review and resolution.

The supervised practice agreement contains requirements for reporting and supervision which create additional responsibilities for both the respondent and his employer. The requirements on the respondent include providing the supervisor with his schedule, a daily log of all work performed, an update on case status, and copies of work product. There shall be a weekly meeting to review the respondent's work and to insure that he is performing satisfactorily. Although these conditions are additional burdens not previously required in his employment, they would be considered standard practice in many law offices and provide a system of organization designed to insure that the respondent properly represents his clients and that the public defender office can verify this through documentation and regular meetings and reviews.

The greater burden of the supervised practice agreement falls on the respondent's employer. The level of scrutiny and direct supervision of the respondent's practice will be much more intensive and time-consuming than what is required to manage other lawyers in the office. The supervising attorney and Chief Defender have agreed to this in the belief that it is in the best interest of the Kanawha County Public Defender Office and

its clients to allow the respondent to continue his practice in this office because he is a capable and effective attorney. The supervised practice agreement will permit the Kanawha County Public Defender Office to supervise the respondent in such a way that client complaints and failures in effective representation will be unlikely to arise.

The respondent has an acknowledged history of failure to promptly comply with responses to complaints filed with disciplinary counsel and to provide information in a timely manner to disciplinary counsel. Disciplinary counsel has noted that this type of negligence is unfortunately consistent with the substance of the complaints against the respondent for failure to communicate and act with diligence. The proposed supervised practice agreement would directly involve the respondent's supervising attorney with any formal disciplinary complaints as well as requiring that any client complaints in pending representation be dealt with immediately before they would rise to the level of a formal complaint with the bar.

As noted in the brief of disciplinary counsel, supervised practice is a sanction imposed regularly in certain types of cases, including the reported case of Lawyer Disciplinary Board v. Roberts, 217 W.Va. 189 (2005).

The terms of Supervised Practice outlined in the agreement have already been put into effect as a condition of the respondent's employment. They will be followed during the time that the decision of this Court is pending.

The respondent is a career public defender and intends to continue in this practice. The respondent has represented numerous clients in seventeen years of practice and has strived to provide effective and adequate representation. The respondent acknowledges his failure to meet his ethical obligations in this matter and that there has been a pattern

of disciplinary complaints relating to post-sentencing motions and failure to adequately communicate with clients. The respondent intends to fully comply with a supervised practice agreement as well any requirements or sanctions which may be imposed by this Court.

The respondent requests that this Court uphold the sanctions recommended by the Hearing Panel Subcommittee.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, John Sullivan, hereby certify that on December 21, 2012 a true and accurate copy of this brief was mailed to Renee Frymyer, Office of Disciplinary Counsel, City Center East, Suite 1200C, 4700 MacCorkle Avenue, SE, Charleston, WV 25304