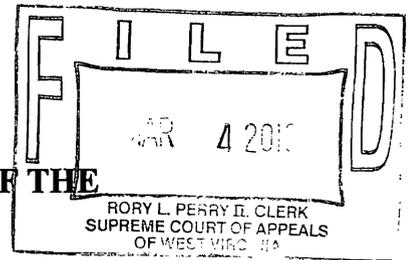


**BEFORE THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA**



LAWYER DISCIPLINARY BOARD,

Complainant,

v.

No. 12-0228

DANIEL R. GRINDO,

Respondent.

BRIEF OF THE LAWYER DISCIPLINARY BOARD

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I. STATEMENT OF THE CASE

A. NATURE OF PROCEEDINGS

This is a disciplinary proceeding against Respondent Daniel R. Grindo, (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 February 21, 2012. The Clerk obtained service of process on Respondent on or about February 28, 2012. Respondent filed his answer to the Statement of Charges on or about March 28, 2012. Disciplinary Counsel filed its mandatory discovery on or about March 19, 2012. Respondent filed his mandatory discovery on or about April 18, 2012.

Thereafter, this matter proceeded to hearing in Sutton, West Virginia, on May 24, 2012. The Hearing Panel Subcommittee was comprised of John W. Cooper, Esquire, Chairperson, J. Miles Morgan, Esquire, and Edward M. Mockler, layperson. Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. Respondent appeared *pro se*. Primarily due to the fact that Respondent did not dispute the allegations as charged, the Hearing Panel Subcommittee heard testimony from Respondent and no additional witnesses were called. ODC Exhibits 1-8 were admitted into evidence at the hearing, as well as Joint Exhibit 1.

On or about November 30, 2012, the Hearing Panel Subcommittee issued its recommendation in this matter and on or about December 12, 2012, filed with the Supreme Court of Appeals of West Virginia its “Order of the Hearing Panel Subcommittee Recommending Adoption of Stipulations” (hereinafter “Order”) as well as Hearing Panel

Exhibit 1 (filed under seal). The Hearing Panel Subcommittee properly found that the evidence established that Respondent violated Rules 1.3; 3.2; and 3.4(c) of the Rules of Professional Conduct with regard to Counts I and II.

On or about January 24, 2013, this Honorable Court issued an Order that indicated it did not concur with the recommended disposition. The Court ordered the parties to submit briefs and set this case for oral argument pursuant to Rule 19 of the Revised Rules of Appellate Procedure.

B. STIPULATED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Daniel R. Grindo (hereinafter “Respondent”) is a lawyer practicing in Braxton 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 by successful passage of the West Virginia Bar Examination on September 24, 2002.

Count I
Complaint of the Office of Disciplinary Counsel
10-03-369

2. On or about March 7, 2008, Respondent filed a Petition for Modification of Parenting Time in the Family Court of Braxton County on behalf of Jeffrey Skidmore.
3. On or about March 31, 2008, the mother of Mr. Skidmore’s child filed a responsive pleading objecting to the Petition for Modification of Parenting time and requested an increase in child support.

4. The Family Court denied Mr. Skidmore's petition, but granted the mother's Petition for Modification of Child Support.
5. By Orders entered or about June 23, 2009, and July 2, 2009, the Braxton County Circuit Court affirmed the lower court decisions.
6. On August 24, 2009, Respondent filed a Petition for Appeal to the West Virginia Supreme Court of Appeals challenging the decisions of the Circuit Court.
7. By Order entered October 29, 2009, the Supreme Court of Appeals of West Virginia granted the Petition for Appeal.
8. The Court issued a briefing/scheduling order on December 21, 2009, requiring Respondent to file his brief within thirty days of receipt.
9. When Respondent failed to submit a brief within the requisite time, the Clerk of the Supreme Court of Appeals of West Virginia contacted him in approximately March 2010 by telephone. Respondent advised that he would send a brief the next day.
10. On or about June 8, 2010, an appellant's brief had still not been received and the Clerk's office mailed a second letter to Respondent giving him an additional twenty days from his receipt of that letter to file the brief.
11. Respondent did not file an appellate brief and did not otherwise respond to the letter from the Court.
12. On September 9, 2010, the matter was presented to the Court for imposition of sanctions provided for under Rule 10(e) of the Rules of Appellate Procedure for failure to file a brief.

13. By Order entered the same day, the Court directed Respondent to “file the brief of Appellant within 15 days of his receipt of this order.” The Court also referred the matter to the Office of Disciplinary Counsel.
14. Pursuant to Rule 2.4 of the Rules of Lawyer Disciplinary Procedure, the Office of Disciplinary Counsel initiated a complaint against Respondent. On or about September 17, 2010, a complaint was sent to Respondent requesting a verified response to the same within 20 days of receipt.
15. On October 4, 2010, Respondent filed his Brief of Appellant on behalf of his client with the Supreme Court.
16. On or about October 12, 2010, Respondent filed a verified response to the complaint.
17. Respondent stated that he was handling the matter on a *pro bono* basis and admitted that he failed to adhere to the Court’s briefing schedule.
18. On April 4, 2011, the Supreme Court of Appeals of West Virginia issued an Opinion that found in favor of Respondent’s client by reversing the lower court ruling on the Petition to Modify the Parenting Plan. However, the Court affirmed the lower court decision with respect to the request for modification of child support.
19. Because Respondent failed to pursue the matter on behalf of his client, Respondent violated Rule 1.3 of the Rules of Professional Conduct, which provides:

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

20. Because Respondent failed to comply with the Court's briefing schedule and failed to expedite the litigation in the interests of his client and the justice system, Respondent has violated Rule 3.2 and Rule 3.4(c) of the Rules of Professional Conduct, which provide:

Rule 3.2 Expediting Litigation

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

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

**Count II
Complaint of the Office of Disciplinary Counsel
11-03-443**

21. On or about June 16, 2011, Respondent filed a Notice of Appeal to the Supreme Court of Appeals of West Virginia on behalf of Joseph Dobbins in the matter of Walker D., No. 11-0931.
22. The Court issued a briefing/scheduling order on June 21, 2011, requiring Respondent to file his brief to perfect the appeal by July 18, 2011.
23. Respondent filed the required Appendix on or about July 29, 2011, but failed to file the Petition for Appeal.
24. When Respondent failed to submit a brief within the requisite time, the Clerk of the Supreme Court contacted him by telephone on several occasions requesting the brief

be filed. Respondent advised that he would promptly file the brief, but no brief has been filed.

25. On or about August 26, 2011, the Department of Health and Human Resources filed a Motion to Dismiss for Respondent's failure to perfect the appeal.
26. Respondent did not file any responsive pleading to the Motion to Dismiss.
27. The Court granted the Motion to Dismiss by Order entered September 8, 2011.
28. By letter dated September 14, 2011, the Court referred the matter to the Office of Disciplinary Counsel.
29. Pursuant to Rule 2.4 of the Rules of Lawyer Disciplinary Procedure, the Office of Disciplinary Counsel initiated a complaint against Respondent. On or about September 21, 2011, a complaint was sent to Respondent requesting a verified response to the same within 20 days of receipt.
30. On or about October 13, 2011, Respondent filed a verified response to the complaint.
31. Respondent again acknowledged that he failed to either file a motion to withdraw or otherwise comply with the Order of the Court directing him to perfect the appeal he filed on his client's behalf.
32. Because Respondent failed to comply with the Court's briefing schedule and failed to expedite the litigation in the interests of his client and the justice system, Respondent has violated Rule 3.2 and Rule 3.4(c) of the Rules of Professional Conduct, which provide:

Rule 3.2 Expediting Litigation

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

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

(c) knowingly disobey an obligation under the rules of a tribunal expect for an open refusal based on an assertion that no valid obligation exists.

33. Rule 3.16 of the Rules of Lawyer Disciplinary Procedure enumerates factors to be considered in imposing sanctions and provides as follows:

Rule 3.16. Factors to be considered in imposing sanctions.

In imposing sanction after a finding of lawyer misconduct, unless otherwise provided in these rules, the Court or Board shall consider the following factors: (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.

34. Respondent knowingly and intentionally violated duties owed to his client and his duty to the legal system.
35. There was actual injury to Respondent's clients and also potential injury to the reputation and integrity of the profession from Respondent's actions in this matter.
36. As recognized by Supreme Court of Appeals of West Virginia in Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 216, 579 S.E. 2d 550, 557(2003) the following mitigating factors are present: 1. full and free disclosure to the Office of Disciplinary Counsel, 2. a cooperative attitude toward proceedings, 3. remedial measures in his

law office, including, but not limited to retaining the services of Affinity Consulting services to conduct an audit of his law office and his law office management to be scheduled in the immediate future. Respondent also indicated that he is scheduled for a continuing legal education seminar on law office management; 4. Respondent has acknowledged that he became overextended with his growing practice and needed both assistance and to withdraw from some of the extra-curricular activities. To that end, Respondent has hired a new associate as of March 18, 2012 and has prioritized his other obligations; 5. personal, family problems during the relevant time period, including that Respondent's son was being seen for a possible spinal tumor that stemmed from some leg weakness he was experiencing. This condition resulted in much testing and diagnosis. After it was determined that he did not have a spinal tumor, he was treated and diagnosed with ketotic hypoglycemia. This diagnosis involved extensive testing at Charleston Area Medical Center, Thomas Memorial, and ultimately the Pittsburgh Children's Hospital; and 6. remorse, as it is Respondent's sincere stated intention to provide quality legal representation to the State of West Virginia and Respondent does not believe his misconduct in this matter is indicative of the quality of work that he is capable of providing in the future.

37. As recognized by Supreme Court of Appeals of West Virginia in Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 216, 579 S.E. 2d 550, 557(2003) the following aggravating factors are present: 1. experience in the practice of law; 2. prior disciplinary action by the Investigative Panel of the Lawyer Disciplinary Board for

neglect;¹ 3. pattern and practice of not diligently pursuing clients' interests; 4. pattern and practice of failing to expedite litigation consistent with the interests of his clients and the justice system; and 5. pattern and practice of failing to respond to briefing schedules and requests from the Supreme Court of Appeals of West Virginia.

II. SUMMARY OF ARGUMENT

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). In order to effectuate the goals of the disciplinary process, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board recommends to this Honorable Court that Respondent be issued an admonishment; that he shall have his law office audited by an expert to evaluate the efficiency of the management of the same and implement any changes deemed necessary in the expert's report²; that Respondent cause said

¹On or about December 12, 2009, the Investigative Panel of the Lawyer Disciplinary Board issued Admonishments to Respondent in Case No. 08-03-018 for violations of Rule 1.5, Rule 1.16(d) and 8.1(b) of the Rules of Professional Conduct; Case No. 08-01-070 for violations of Rule 8.1(b) of the Rules of Professional Conduct; Case No. 08-04-234 for violations of Rules 1.3, Rule 1.4(a) Rule 1.4(b) of the Rules of Professional Conduct; and Case No. 08-04-413 for violation of Rule 8.1(b) of the Rules of Professional Conduct.

²The Hearing Panel Subcommittee withheld decision in this case until Respondent underwent this evaluation by the expert on law office management. The Hearing Panel Subcommittee received and reviewed a detailed report with attached exhibits from Affinity Consulting Group, which outlined the practice management techniques and technologies which were identified and recommended in order to assist Respondent. The Hearing Panel Subcommittee found that the report was comprehensive and included a number of practice management suggestions which should assist Respondent in conducting his law practice in a manner in which would avoid further problems similar to those admitted to in the instant proceedings.

law office expert to return 6 months after his initial assessment to conduct an evaluation as to the implementation of the recommended changes; that Respondent shall complete an additional 3 hours of continuing legal education in the area of law office management and ethics above and beyond that already required by the Mandatory Continuing Legal Education Commission; and that Respondent shall the costs of the proceedings.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule 19 of the Revised Rules of Appellate Procedure, this Honorable Court's January 24, 2013 Order set this matter for oral argument for May 14, 2013.

IV. ARGUMENT

A. STANDARD OF PROOF

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 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).

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).

B. RULE 3.16 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE

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).

Respondent knowingly and intentionally violated duties owed to his clients and his duty to the legal system.³ In Mr. Skidmore's domestic matter, the delays Respondent's conduct caused are inexcusable and were clearly to the detriment of his client. The amount of real injury suffered by Mr. Skidmore because of the delays in getting this successful domestic appeal heard by the Court is immeasurable. With respect to the Dobbins matter, although Respondent maintained that he is unclear whether there were sufficient grounds to pursue the appeal, it is not disputed that Respondent did not withdraw as counsel or file a responsive pleading and the appeal was ultimately dismissed by the Court due to Respondent's inaction.⁴

³It is noted that ODC received these complaints directly from the Court, not from Mr. Skidmore or Mr. Dobbins.

⁴It is necessary to point out that Respondent's position as to his concerns about his client's right of appeal in abuse and neglect cases versus his duty not to bring a frivolous pleading was asserted prior to this Court's clarifying statements this matter came to hearing prior to the Court's Opinion in State v. McGill, 736 S.E.2d 85, 2012 wherein this Court stated:

This Court has observed that since the Rules of Appellate Procedure have been modified to more clearly provide a right of appeal in all cases, the frequency of such creative methods to obtain review has increased. Although the appellate procedures have undergone change to insure that the disposition of each perfected appeal is reflected in a written decision, nothing has changed as to the professional responsibility of lawyers to proceed only on meritorious issues. The change in the appellate rules was in no way intended to impose a greater or lesser burden on the legal community. Pursuant to principles contained in Rule 3.1 of the West Virginia Rules of Professional Conduct, FN6 an appellate remedy should not be pursued unless counsel believes in good faith that error has been committed and there is a reasonable basis for the extension, modification, or reversal of existing law. FN7

FN6. Rule 3.1 is entitled "Meritorious claims and contentions" and provides in relevant part that "A

In addition to the damage to the clients, Respondent's dilatory behaviors in the Skidmore and Dobbins matter also caused damage to the court system by wasting valuable court resources. As an officer of the court, Respondent's refusal to comply with the Court's order taints the image of the profession.

There are mitigating and aggravating factors present in this matter. *See supra*. Clearly, the mitigating factors presented at the hearing weighed heavily in crafting this sanction, but the remedial measures taken and interim rehabilitation demonstrated by Respondent post-hearing were clearly relevant as well. The Hearing Panel delayed the issuance of its recommendation until Respondent engaged the services of the expert to evaluate his law office practice. The recommended sanction was only submitted to this Honorable Court after the Hearing Panel Subcommittee received and reviewed the evaluative report of the law office management expert. It is further noted that as of the filing of this pleading, Respondent has not received any additional ethics complaints that were docketed for an investigation by the Office of Disciplinary Counsel.

lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”

FN7. We acknowledge that good faith may at times be defined by the legal obligation of counsel to file a brief referring to any point in the record that might arguably support the appeal in instances where a criminal defendant insists upon appeal after being advised that the case is wholly frivolous. *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967); see also *Turner v. Haynes*, 162 W.Va. 33, 245 S.E.2d 629 (1978), *Rhodes v. Leverette*, 160 W.Va. 781, 239 S.E.2d 136 (1977).

C. SANCTION

Rule 3.15 of the Rules of Lawyer Disciplinary Procedure provides that the following sanctions may be imposed in a disciplinary proceeding: (1) probation; (2) restitution; (3) limitation on the nature or extent of future practice; (4) supervised practice; (5) community service; (6) admonishment; (7) reprimand; (8) suspension; or (9) annulment. The Hearing Panel Subcommittee recommended that for his course of conduct that Respondent should be admonished; that he continue with implementation of the recommendations of the law office expert that he retained to have his practice evaluated; that he undergo additional evaluations at his cost; that he be required to have an additional three hours of continuing legal education; and that he pay the costs of these proceedings.

Based on Respondent's past history of being admonished by the Investigative Panel of the Lawyer Disciplinary Board, there is case law that would support the recommendation for a 30 day suspension of Respondent's law license.⁵ See Lawyer Disciplinary Board v. Sullivan, --- S.E.2d ----, 2013 WL 216073, W.Va., 2013. It is noted that the admonishments in Respondent's prior cases primarily dealt with failing to respond to disciplinary counsel; lack of diligence; and lack of communication. See Footnote 1. However, the primary distinction between the instant case and Sullivan is the remedial measures taken by Respondent and the interim rehabilitation, including but not limited to: hiring another associate attorney to manage the responsibilities of the growing law practice; having the law office management expert

⁵It is noted that the Sullivan opinion was issued in January of 2013 and this recommendation was filed with the Court on or about December 12, 2012.

come into his office to evaluate his practices and procedures and implementing the suggested changes; and the absence of additional ethics complaints against Respondent during the pendency of the instant proceedings. Unlike Respondent, the same misconduct which resulted in the admonishments from the Investigative Panel of the Lawyer Disciplinary Board continued uninterrupted throughout the disciplinary proceedings.

Respondent's case is also distinguished from Lawyer Disciplinary Board v. Joseph P. Albright, Jr., No. 35282 (WV 3/14/11). Mr. Albright was suspended for one year for violations of Rule 1.3, Rule 1.4(b), Rule 1.5, Rule 3.2, Rule 8.1(b), Rule 8.4(c), Rule 8.4(d) of the Rules of Professional Conduct. First, although Respondent has been admonished by the Investigative Panel, he has no prior discipline from this Court. In Albright III, this was the third formal disciplinary matter for Mr. Albright and the same constituted a pattern of misconduct.⁶ Second, Mr. Albright took legal fees from clients in these cases and failed to perform the services and failed to issue refunds when the services were not performed. It is noted that, in the instant case, upon information and belief, Respondent did not charge Mr. Skidmore fees for his legal services and upon information and belief, Respondent did not issue a voucher to the public defender services for any legal services in Mr. Dobbins case post verdict. Lawyer Disciplinary Board v. Joseph P. Albright, Jr., 227 W.Va. 197, 706 S.E. 2d 552 (2011).

⁶Mr. Albright was publicly reprimanded for his violations of Rule 1.3; Rule 1.4(a); and multiple violations of Rule 8.1(b). Lawyer Disciplinary Board v. Joseph P. Albright, Jr., No. 33116 (WV 1/10/07). Additionally, Mr. Albright was also held in contempt of court for violating the disciplinary order in No. 33116. State of West Virginia ex rel, Office of Disciplinary Counsel v. Joseph P. Albright, Jr., 225 W.Va. 105, 690 S.E.2d 113 (2009) (Albright II).

Similar to Albright, the Court also suspended Dennie S. Morgan's law license for a period of one year Lawyer Disciplinary Board v. Dennie S. Morgan, Jr., No. 35513 (WV 11/28/11) for multiple violations of Rules 1.3, 1.4(a), 1.4(b), 1.5(a), 1.15(a), 1.16(d), 3.2, 8.1(b), 8.4(c) and 8.4(d) of the Rules of Professional Conduct. Similar to this case, many of there were a tremendous amount of issues within the law practice and the Court required that upon being reinstated, Respondent was ordered to undergo two years of supervised practice and was required to implement practice changes as suggested by a law office expert. However, the facts in this case, are different in that, again Respondent did not charge and retain fees from clients for the services he failed to timely perform. Lawyer Disciplinary Board v. Dennie S. Morgan, Jr. 228 W.Va. 114, 717 S.E. 2d 898 (2011).

Respondent's case is more similar to Lawyer Disciplinary Board v. Brent E. Beveridge, No. 22446 (6/21/95) a *per curiam* decision wherein the Court issued an admonishment; ordered six months of supervised practice and assessed costs, for violating Rules 1.3, 1.4(b), 1.16(d) and 8.1(b) of the Rules of Professional Conduct. Lawyer Disciplinary Board v. Brent E. Beveridge, 194 W.Va. 154, 459 S.E.2d 542 (1995). After a full hearing in the matter, the Committee recommended that Mr. Beveridge's license be suspended for 3 months, with that suspension stayed. The Committee further recommended upon acceptance of supervised practice that Respondent be publicly reprimanded. The Court ultimately rejected the Committee's recommendation and weighed the serious nature of the misconduct against the remedial changes in his law practice procedure he made as a result of the disciplinary proceedings. Similar to the facts in the instant case, the Court ultimately found that the "the

root causes of Mr. Beveridge's problems are "deficiencies in the organization and management of the Respondent's law practice" and reasoned that the admonishment and other conditions were more suitable than that of a reprimand or suspension of his license. Lawyer Disciplinary Board v. Brent E. Beveridge, 194 W.Va. at 162, 459 S.E.2d at 550 (1995).

Additionally, while the undersigned recognizes the absence of the precedential value there are a number of unreported, unpublished West Virginia cases that suggest that the recommendation is not an appropriate sanction under the circumstances present in the instant case. *See* Lawyer Disciplinary Board v. Jesse O'Dell Guills, Jr., No. 23811 (W.Va. 1/21/98): for diligence violations and for failing to timely respond to ODC, Respondent was admonished; ordered to undergo supervision of practice of law for one and one-half years; ordered to continue therapy and counseling for a minimum of six months; and agreed that if, during the next five years, if Respondent does not timely respond to Disciplinary Counsel within the specific requirements established in the order, he shall be suspended from the practice of law for three months. Lawyer Disciplinary Board v. C. Darren Tallman, No. 24039 (W.Va. 3/30/98): for diligence and client communication violations, Respondent was admonished; ordered to pay all costs and expenses incurred in the investigation of this matter; ordered to implement an office plan to improve his office systems/practices; shall report to the Office of Disciplinary Counsel on the resolution of an issue in the underlying case; and shall practice law under the direct supervision of an attorney for a period of twelve months. Lawyer Disciplinary Board v. Michael C. Farber, No. 24795 (W.Va. 5/14/98): for Respondent's failure to timely file or file a response to the Office of Disciplinary Counsel's request for answers to

three complaints, Respondent was admonished and agreed that, for a period of five years, Respondent will file his answer to a complaint without the Office of Disciplinary Counsel sending a second letter; failure to do so within 40 days of the receipt of such letter will result in an automatic suspension of Respondent's law license for three months; and was assessed costs. Lawyer Disciplinary Board v. Bernice B. Weinstein, No. 25040 (W.Va. 5/19/99): for violation of diligence, Respondent was admonished; ordered to return files to her former clients or to their attorney, along with a portion of her fee in the amount of \$3,000.00; agreed to a limited practice; and was assessed costs. Lawyer Disciplinary Board v. J. Michael Anderson, No. 25419 (W.Va. 1/13/00): for failure to act with reasonable diligence and promptness, failure to keep clients reasonably informed about the status of their matters in two civil matters and one domestic relations action, and for failure to respond to ODC requests for information, Respondent was admonished. Respondent was advised to continue to implement specific office procedures he voluntarily made. The Supreme Court also ordered Respondent to participate in the supervision of his practice for one and one-half years with quarterly reports to the ODC. Respondent also was ordered to respond to any future complaints on a timely basis for a period of five years. Lawyer Disciplinary Board v. J. Michael Cassell, No. 24302 (W.Va. 1/26/00): for failing to act with reasonable diligence and promptness in representing a client by his failure to promptly comply with his client's reasonable requests for information about a case he was neglecting; failing to respond timely to pre-trial discovery in a civil case; and failing to comply timely with an order compelling discovery, Respondent was admonished; put on probation period of two years; and the Court ordered that his license to practice law be

suspended as a probation violation for a period of two months should an ethics complaint be filed for conduct occurring during the probationary period involving lack of diligence or failure to communicate which are found to well-founded by the Investigative Panel; and was assessed costs. Lawyer Disciplinary Board v. John P. Stimmel, No. 30188, (WV 7/2/02): for violations of Rules 1.3 and 8.1(b) concerning a lack of diligence and failure to respond to disciplinary counsel, Respondent was admonished; ordered to undergo supervised practice for one year; and ordered to take medicine for depression as prescribed; and the Court ordered that if Respondent failed to respond to ethics complaints, the same would result in a 3 month suspension of his law license. Lawyer Disciplinary Board v. Silas Mason Preston, No. 33329 (WV 9/14/07): for his violation of lack of diligence, Respondent was admonished; ordered to complete six additional hours of CLE during the 2006-2008 reporting period, specifically in the area of ethics and/or office management; ordered to accept at least two *pro bono* matters from Legal Aid of West Virginia over the next year and verify the same with the Office of Disciplinary Counsel; ordered to conclude the subject estate within 30 days of receipt of the Order; and was assessed costs. Lawyer Disciplinary Board v. Joan A. Mooney, No. 33595 (WV 05/22/08): for her violations of lack of diligence, lack of communication, and failing to respond to Disciplinary Counsel, Respondent was admonished; undergo supervised practice for a period of one year; undergo comprehensive psychological counseling and follow recommended treatment plan; complete additional six hours of CLE over and above that required; and was assessed costs. [The Court's orders are attached for reference].

V. CONCLUSION

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, 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).

“A sanction is to not only punish the attorney, but should also be designed to reassure the public confidence in the integrity of the legal profession and deter other lawyers from similar conduct.” Syl. pt 2, Committee on Legal Ethics v. White, 189 W.Va. 135, 428 S.E.2d 556 (1993); Syl. pt 3, Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987); Syl. pt. 5, Committee on Legal Ethics v. Roark, 181 W.Va. 260, 382 S.E.2d 313 (1989); Syl pt. 3, Lawyer Disciplinary Board v. Friend, 200 W.Va. 368, 489 S.E.2d 750 (1997);

and Syl pt. 3, Lawyer Disciplinary Board v. Keenan, 208 W.Va. 645, 542 S.E.2d 466 (2000). Respondent's misconduct involving his clients is deplorable and his blatant disrespect to this Honorable Court's orders is egregious. Respondent's misconduct clearly warrants a sanction. However, at times, in crafting a sanction that comports with the principles of the disciplinary system, it is important to "mix a little mercy with justice." Lawyer Disciplinary Board v. Brown, 223 W.Va. 554, 678 S.E.2d 60 (2009) (Ketchum M., dissenting).

For the reasons set forth above, the Board requests that this Honorable Court accept the recommended sanctions, which include:

1. That Respondent be admonished;
2. Since Respondent has already undergone the law office management audit that he continue to implement any changes deemed necessary in the expert's report;
3. That Respondent shall cause said law office expert to return 6 months after his initial assessment to conduct an evaluation as to the implementation of the recommended changes;
3. That Respondent shall complete an additional 3 hours of CLE during the 2013-2014 reporting period, specifically in the area of ethics and office management over and above that already required by the Mandatory Continuing Legal Education Commission; and
4. That pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure that Respondent shall be ordered pay the costs incurred in this disciplinary proceeding.

Respectfully submitted,
The Lawyer Disciplinary Board
By Counsel



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CERTIFICATE OF SERVICE

This is to certify that I, Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 4th day of March 2013, served a true copy of the foregoing "**Brief of the Lawyer Disciplinary Board**" upon Respondent Daniel R. Grindo, Esquire, by mailing the same via United States Mail, with sufficient postage, to the following address:

Daniel R. Grindo, Esquire
624 Elk Street
Gassaway, West Virginia 26624



Rachael L. Fletcher Cipoletti