

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

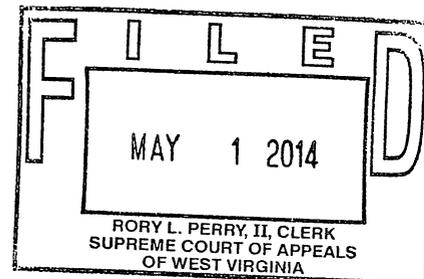
**LAWYER DISCIPLINARY BOARD,**

**Complainant,**

**v.**

**GEORGE P. STANTON, III,**

**Respondent.**



**No. 13-0138**

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**REPLY BRIEF OF THE LAWYER DISCIPLINARY BOARD**

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## REPLY TO RESPONDENT'S BRIEF

The Hearing Panel Subcommittee properly found that the evidence established that Respondent violated Rule 1.7(b) [conflict of interest created by lawyer's own interest]; 8.1(b) [false statements in disciplinary proceedings]; 8.4(a) [attempt to violate Rule 8.4(g)]; 8.4(c) [dishonesty; fraud; deceit; or misrepresentation] and Rule 8.4(d) of the Rules of Professional Conduct. The Hearing Panel has recommended to this Honorable Court that Respondent be suspended for a period of 3 years and pay the costs of the proceedings. Respondent claims that his due process rights were violated and requests that the case should be remanded to the Hearing Panel Subcommittee. These claims are not substantiated by the record and are not supported by any cited law and must fail.

### A. Due process requirements were satisfied.

A lawyer is entitled to due process of law in attorney disciplinary proceedings. *See Committee on Legal Ethics v. Folio*, 184 W.Va. 503, 401 S.E.2d 248 (1990); *Committee on Legal Ethics v. Boettner*, 183 W.Va. 136, 394 S.E.2d 735 (1990). Generally, due process requires that the attorney be given notice of the allegations against him and an opportunity to be heard. *See In re: Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968).

The Barber Court found that there was not a due process violation when the Hearing Panel found a violation of uncharged conduct when "it was related to or was within the scope of the conduct and rule violations specifically charged." Lawyer Disciplinary Board v. Barber, 211 W.Va. 358, 365, 566 S.E.2d 245, 252 (2002) *quoting* The Florida Bar v.

Fredericks, 731 So.2d 1249 (Florida 1999). The Barber court explained that “[d]ecisions subsequent to Ruffalo have refined the concept of due process as it applies to lawyer disciplinary hearings, and suggest that the notice to be provided be more in the nature of that provided in civil cases. The weight of authority appears to be that, unlike due process provided in criminal actions, there are no stringent or technical requirements in setting forth allegations or descriptions of alleged offenses .... Due process requires only that the charges must be sufficiently clear and specific to inform the attorney of the misconduct charged.” Lawyer Disciplinary Board v. Barber, 211 W.Va. 358, 365, 566 S.E.2d 245, 252 (2002) *quoting* In the Matter of James W.Coder, 35 P.3d 853 (Kan.2001). The Hearing Panel Subcommittee’s findings of additional violations of the Rules of Professional Conduct is not a violation of Respondent’s right to due process of the law.

Respondent states in his brief to this Court that he agrees in principle that “it’s not a violation of due process to discipline a lawyer for infractions not set forth in the Statement of Charges.” Respondent Brief at 18. However, Respondent still appears to complain that he was deprived of due process in the proceeding before the Hearing Panel Subcommittee. To support this claim, Respondent inexplicably claims that he was never charged with any misconduct arising from his relationship with Inmate Anderson. This simply is an untrue statement. The additional findings of violations are clearly within the scope of the conduct that was specifically charged– in fact, one violation of Rule 8.4(d) [prejudice to the

administration of justice] is nearly verbatim of the original charging language of the Statement of Charges.

The original Statement of Charges outlined Respondent's relationships with and actions toward three inmates that he was listed as counsel for that were housed at Lakin Correctional Center. The formal charges stated in pertinent part that "Respondent initiated a personal relationship with Ms. Anderson and has pursued the same while Ms. Anderson was/is his client. Respondent's conduct in pursuing and in conducting a personal relationship with a client in a vulnerable situation reflects adversely on his character and fitness to practice law..." and clearly alleged the same was in violation of Rule 8.4(d) of the Rules of Professional Conduct. Respondent was put on general notice of the allegations against him that his relationship with Inmate Anderson and the pursuit of the relationship with Inmate Anderson amounted to actions that were prejudicial to the administration of justice. The Hearing Panel Subcommittee found that the evidence was clear that Respondent initiated a personal relationship with Inmate Anderson and has pursued the same while Inmate Anderson was/is his client. Respondent's conduct in pursuing and in conducting a personal relationship with a client in a vulnerable situation reflects adversely on his character and fitness to practice law and the same is in violation of Rule 8.4(d) of the Rules of Professional Conduct. HPS Report at ¶57. This finding by the Hearing Panel Subcommittee is nearly identical to the language in the original charging document issued by the Investigative Panel. *See* Statement of Charges at ¶36. It must be clear that this finding and violation alone should

result in substantial disciplinary action against Respondent<sup>1</sup>. See Lawyer Disciplinary Board v. Stanton, 225 W.Va. 671, 695 S.E. 901 (2010).

**B. There are no grounds to remand.**

Respondent has requested that this Court remand the matter to the Hearing Panel Subcommittee and stated “[he] really wish[ed] [he] could have had a hearing on these matters.” Respondent Brief at 20. Respondent cites to no error in the proceedings. Respondent does not cite to any legal authority to support his request for a remand. Any prejudice suffered by Respondent was of his own creation and should not result in this matter being remanded back to the Hearing Panel Subcommittee.

Respondent appeared at his August 29, 2013 evidentiary hearing wearing shorts, a t’shirt and running shoes and carrying the proposed exhibit notebook that ODC had mailed him on August 22, 2013<sup>2</sup>. ODC began its case-in-chief and after two witnesses, including Inmate Anderson’s testimony, Respondent openly declared his intent to leave his disciplinary hearing. Transcript at 67-68. Respondent was advised by the Chair of the Hearing Panel Subcommittee that “..you can leave at any time. We’re going to continue with the hearing.”

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<sup>1</sup> Even if the Court accepts the premise that the additional rule violations not specifically pled in the Statement of Charges were in violation of Respondent’s due process rights, the additional rule violations can be viewed as aggravating factors. 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. 216, 579 S.E. 2d 550, 557 (2003).

<sup>2</sup> Pursuant to Rule 3.4 of the Rules of Lawyer Disciplinary Procedure, each proposed exhibit and witness had been previously provided to Respondent in a timely manner.

Transcript at 68. Despite the admonitions from the Hearing Panel Subcommittee and ODC, Respondent advised the Hearing Panel Subcommittee that he was going out for some air and he left the premises and never returned to the hearing. Transcript at 181-182. By letter dated September 3, 2013, ODC advised Respondent that his hearing proceeded on in his absence and that ODC had now rested its case. Additionally, ODC also provided Respondent with his exhibit notebook and the notepad that he left when he left the hearing.

Respondent had a full evidentiary hearing in this matter as required by Rules 3-3.10 of the Rules of Lawyer Disciplinary Procedure on August 29, 2013, and there are no grounds in law or equity to remand this matter for any additional evidence.

### **CONCLUSION**

Respondent was given general notice of his misconduct, he was promptly given all discovery, he was given an opportunity to be confront and cross examine witnesses in a hearing before an impartial Hearing Panel Subcommittee, and the Hearing Panel Subcommittee issued a recommended decision based upon the record. The findings were proper and not in violation of Respondent's right to due process of law. There are no grounds to remand this matter and to do so would be a waste of resources.

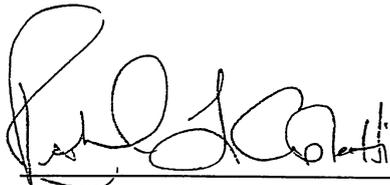
Based on the totality of Respondent's misconduct, the aggravating factors in this case, the relevant case law and the guidelines from the ABA Model Standards for Imposing Lawyer Sanctions, for the public to have confidence in our disciplinary and legal systems,

lawyers who engage in the type of conduct exhibited by Respondent must be severely sanctioned.

Accordingly, for the reasons set forth above, the Board requests that this Honorable Court adopt the following sanctions:

1. That Respondent's license to practice law be suspended for a period of 3 years;
2. That Respondent comply with Rule 3.28 of the Rules of Lawyer Disciplinary Procedure; and
3. That Respondent pay the costs of the disciplinary proceedings.

LAWYER DISCIPLINARY BOARD  
By Counsel,



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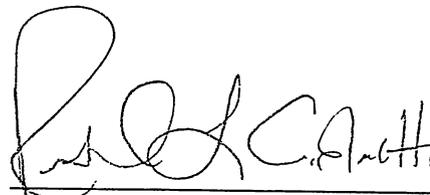
**CERTIFICATE OF SERVICE**

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This is to certify that I, Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 1<sup>st</sup> day of May, 2014, served a true copy of the foregoing "**REPLY BRIEF OF THE LAWYER DISCIPLINARY BOARD**" upon Georg P. Stanton, III, by mailing the same, United States Mail with sufficient postage, to the following address:

George P. Stanton, Esquire  
Post Office Box 933  
Fairmont, West Virginia 26555-0933



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Rachael L. Fletcher Cipoletti