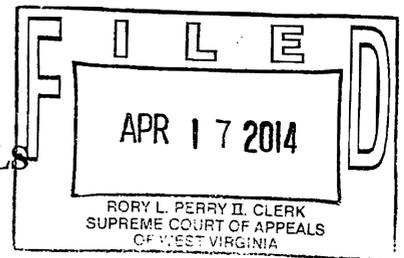


BEFORE THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA



In Re: JOHN F. HUSSELL, IV, a member of
The West Virginia State Bar

Bar No.: 6610
Supreme Court No.: 13-0544
I.D. No.: 11-05-289

REPORT OF THE HEARING PANEL SUBCOMMITTEE

I. PROCEDURAL HISTORY

Formal charges were filed against Respondent John F. Hussell, IV, with the Clerk of the Supreme Court of Appeals on or about May 24, 2013, and served upon Respondent via certified mail by the Clerk on May 29, 2013. Disciplinary Counsel filed her mandatory discovery on or about June 18, 2013. Respondent filed his "Verified Answer to Statement of Charges" on or about June 28, 2013. Respondent requested and was granted an extension to July 25, 2013, to provide his mandatory discovery, and filed it on that same date.

Thereafter, on October 29, 2013, this matter proceeded to hearing in Charleston, West Virginia. The Hearing Panel Subcommittee was comprised of Paul T. Camilletti, Esquire, Chairperson, Steven K. Nord, Esquire, and Mrs. Priscilla M. Haden, layperson. Jessica H. Donahue Rhodes, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. Benjamin L. Bailey, Esquire, and Michael B. Hissam, Esquire, appeared on behalf of Respondent, who also appeared. The Hearing Panel

Subcommittee heard testimony from Carolyn LaFollette, James Calvert LaFollette, Latelle M. LaFollette, Dearmond Arbogast, Craig M. Kay, Esquire, and Respondent. In addition, ODC Exhibits 1-25 and Respondent's Exhibits R2 and R3 were admitted into evidence.

Based upon the evidence and the record, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board hereby makes the following Findings of Fact, Conclusions of Law and Recommended Sanctions regarding the final disposition of this matter.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. John F. Hussell, IV (hereinafter "Respondent") is a lawyer practicing in Charleston, which is located in Kanawha County, West Virginia. ODC Ex. 21, p. 141. Respondent, having passed the Bar exam, was admitted to The West Virginia State Bar on October 3, 1994. ODC Ex. 21, p. 144. As such, Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.
2. Complainant James Calvert LaFollette filed an ethics complaint against Respondent on June 27, 2011. ODC Ex. 1, p. 1-8. Mr. LaFollette stated that Respondent was hired to assist his family¹ with estate planning in late summer or early autumn of 2009. ODC Ex. 1, p. 1.

¹ This included his father, Latelle McKay LaFollette, III; his sister, Dearmond Arbogast; his brother, Latelle McKay LaFollette, IV; Complainant and his then wife, Carolyn LaFollette.

3. Mr. LaFollette said that, beginning in August of 2009, Respondent and his wife began spending a great deal of time together. Id. He said when he questioned her about the relationship, she stated that Respondent and his wife were having marital problems and Respondent had no one else to talk with about his problems. ODC Ex. 1, p. 2.
4. On or about September 12, 2009, Mr. LaFollette and his family hired Respondent to handle their estate planning. ODC Ex. 1, p. 4-5.
5. Mr. LaFollette said he and his wife were having marital problems, and he spoke with Respondent about keeping the information he provided and details of his estate planning separate from that of his wife. ODC Ex: 1, p. 2. He said Respondent assured him that would not be a problem and that he could continue to represent both of them with estate planning. Id.
6. On or about January 6, 2010, Respondent prepared a letter which stated he could represent both parties and keep each client's information separate and confidential. ODC Ex. 1, p. 6-7.
7. On or about January 14, 2010, both Mr. and Mrs. LaFollette signed the January 6, 2010 letter. Id. Mr. LaFollette stated that he and his wife had separated around this time. ODC Ex. 1, p. 2.

8. Mr. LaFollette stated that Respondent bought a phone in order to make telephone calls to Mrs. LaFollette with the purpose of keeping the telephone calls hidden from both Mr. LaFollette and Mrs. Hussell. Id.
9. Mr. LaFollette stated that he and his wife had agreed on the value of a cabin which was marital property, but Respondent gave Mrs. LaFollette advice about the value of the property and, based on this advice, Mr. LaFollette had to pay an increased amount thereon. Id.
10. Mr. LaFollette stated that sometime between January and May of 2010, Respondent and Mrs. LaFollette began a sexual relationship. ODC Ex. 1, p. 2-3.
11. Mr. LaFollette provided an affidavit signed by Mrs. LaFollette wherein she admitted to the affair and stated she told her husband about the same in May of 2010. ODC Ex. 1, p. 8. She also stated that she discussed the value of the property with Respondent, and Respondent was one of the neighbors who stated the value was too low. Id. Mrs. LaFollette went on to say that she discussed the formula for alimony with Respondent, and he gave her feedback. Id.
12. Mr. LaFollette said he and other family members, with the exception of Mrs. LaFollette, terminated their professional relationship with Respondent on or about June 17, 2010. ODC Ex. 1, p. 3.
13. In his initial response to the ethics complaint, Respondent stated that he

represented Mr. and Mrs. LaFollette from September 12, 2009, to January 10, 2010. ODC Ex. 4, p. 15. Respondent stated that he only performed two and a half (2.5) hours of work on their behalf, which consisted of a diagram of a tax plan and speaking with them about the selection of individuals to be named to serve in a fiduciary capacity in the documents. Id. Respondent said he never received any financial information from either party. Id.

14. Respondent stated that he met with Mr. LaFollette in Greenbrier County on January 10, 2010, to discuss the termination of the attorney-client relationship. ODC Ex. 4, p. 16. Respondent stated that on that date, Mr. LaFollette told him he had contacted Elizabeth D. Keightley, a trust officer at Branch Banking & Trust Company, concerning the selection of another estate planning attorney. Id. Respondent stated he never performed any legal work for Mr. LaFollette after that date. Id.
15. Respondent denied giving Mrs. LaFollette any legal advice concerning her divorce after the termination of the representation on January 10, 2010. ODC Ex. 4, p. 16-17. He said the only “feedback” he gave to Mrs. LaFollette concerning her divorce was to speak with her legal counsel. Id.
16. At her sworn statement on December 12, 2012, Mrs. LaFollette stated the following:
 - A. Respondent did purchase a phone to keep their conversations hidden from

both spouses, ODC Ex. 18, p. 90;

- B. Respondent advised her to get another appraisal on some marital property, ODC Ex. 18, p. 96;
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- C. Mr. LaFollette fired Respondent after Mr. LaFollette found out about the sexual relationship between Respondent and Mrs. LaFollette, ODC Ex. 18, p. 99;

- D. In or around March of 2010, Respondent and Mrs. LaFollette started a sexual relationship, ODC Ex. 18, p. 110;

- E. In or around June or July of 2010, Mrs. LaFollette ended her sexual relationship with Respondent, ODC Ex. 18, p. 114;

- F. Respondent had indicated that he would take care of Mrs. LaFollette if she was divorced, ODC Ex. 18, p. 119; and

- G. Mr. LaFollette was upset when he discovered Mrs. LaFollette's and Respondent's sexual relationship because Respondent was Mr. LaFollette's friend and attorney. ODC Ex. 18, p. 99-100.

17. At his sworn statement on January 9, 2013, Respondent stated the following:

- A. Respondent met with Mr. LaFollette and Mrs. LaFollette on or about September 11, 2009, ODC Ex. 21, p. 148;
- B. On or about September 12, 2009, Respondent sent an engagement letter to Mr. and Mrs. LaFollette about representing the LaFollettes in estate

planning services, ODC Ex. 21, p. 148-149;

- C. On or about September 12, 2009, Mr. and Mrs. LaFollette signed the engagement letter, ODC Ex. 21, p. 149;
-
- D. Respondent did not receive any financial information from Mr. or Mrs. LaFollette, ODC Ex. 21, p. 153;
- E. Respondent denied that he told Mrs. LaFollette that he would take care of Mrs. LaFollette if she received a divorce, ODC Ex. 21, p. 163;
- F. On or about January 10, 2010, Respondent spoke with Mr. LaFollette about Mr. LaFollette getting a divorce, that Mr. LaFollette did not want Respondent to represent him, and that Elizabeth Keightley had given Mr. LaFollette another attorney's name to represent Mr. LaFollette, ODC Ex. 21, p. 169-170;
- G. Respondent did not contact Mr. LaFollette after receiving the January 6, 2010 letter that was signed by both Mr. and Mrs. LaFollette on January 14, 2010, ODC Ex. 21, p. 174-175;
- H. Respondent never wrote a disengagement letter, ODC Ex. 21, p. 172-173, 176;
- I. Respondent advised Mrs. LaFollette to follow her attorney's advice regarding getting another appraisal on marital property, ODC Ex. 21, p.180-181;

J. Around March of 2010, Respondent met Mrs. LaFollette in Florida and had sexual relations while there, ODC Ex. 21, p. 186-187; and

K. Respondent had sexual relations with Mrs. LaFollette in or around May or June of 2010 during the concerts on the levee in Charleston, West Virginia. ODC Ex. 21, p. 185.

18. On or about May 26, 2010, Mr. LaFollette met with a new attorney, Craig Kay, Esquire, to take over the LaFollette family's estate planning. ODC Ex. 25, p. 221 (Exhibit filed under seal), Hrg. Trans. p. 215. During that meeting, Mr. LaFollette informed Mr. Kay that he had found out about Respondent and Mrs. LaFollette's sexual relations the week before. Id.
19. On or about June 1, 2010, Mr. Kay made the first contact with Respondent to obtain the LaFollettes' client files. ODC Ex. 25, p. 261 (Exhibit filed under seal).
20. On or about June 17, 2010, Respondent provided the complete client files for the LaFollettes except for Mrs. LaFollette. ODC Ex. 25, p. 222-223 (Exhibit filed under seal).
21. Because Respondent falsely stated that the representation was terminated by Mr. LaFollette on January 10, 2010, when in fact Mr. LaFollette signed the representation letter on January 14, 2010, he has violated Rules 8.1(a) and 8.4(c) of the Rules of Professional Conduct, which provide as follows:

Rule 8.1. Bar admission and disciplinary matters.

[A] lawyer in connection with . . . a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact.

and

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

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

22. Because Respondent engaged in a sexual relationship with Mrs. LaFollette before his representation of the LaFollettes was terminated, he violated Rule 8.4(g) of the Rules of Professional Conduct, which provides as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

- (g) have sexual relations with a client whom the lawyer personally represents during the legal representation unless a consensual sexual relationship existed between them at the commencement of the lawyer/client relationship. For purposes of this rule, "sexual relations" means sexual intercourse or any touching of the sexual or other intimate parts of a client or causing such client to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party or as a means of abuse.

23. Because Respondent gave Mrs. LaFollette independent legal advice concerning marital property and alimony matters while both Mr. and Mrs. LaFollette were his clients for estate planning, he violated Rule 1.7(a) of the Rules of Professional

Conduct, which provides as follows:

Rule 1.7. Conflict of interest: General rules.

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.

24. Because Respondent had sexual relations with his client Mrs. LaFollette who was also his client's wife which created an impermissible conflict between his own interests and those of his client, Respondent violated Rule 1.7(b) of the Rules of Professional Conduct, which provides as follows:

Rule 1.7. Conflict of interest: General rules.

(b) A lawyer shall not represent a client if the responsibilities of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation

III. DISCUSSION

The Supreme Court of Appeals of West Virginia has long recognized that attorney disciplinary proceedings are not designed solely to punish the attorney, but also to protect the public, to reassure the public as to the reliability and integrity of attorneys, and to safeguard its interests in the administration of justice. Lawyer Disciplinary Board v. Taylor, 192 W.Va. 139, 451 S.E.2d 440 (1994). Factors to be considered in imposing

appropriate sanctions are found in Rule 3.16 of the Rules of Lawyer Disciplinary Procedure. These factors consist of: (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors. *See also*, Syl. Pt. 4, Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d 722 (1998).

A. Respondent violated duties to his clients, to the public, to the legal system and to the legal profession.

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

Respondent denied having any sexual relations with Carolyn LaFollette while she and Calvert LaFollette were his clients. Respondent's testimony was that he represented Calvert LaFollette and Carolyn LaFollette from September 12, 2009 until January 10, 2010. Respondent testified that Calvert LaFollette never made any indication after

January 10, 2010 that Calvert LaFollette wanted Respondent to continue in representing him. Hrg. Trans. p. 239. Respondent testified that he spoke with Calvert LaFollette on January 10, 2010, and Calvert LaFollette indicated that he was going to hire another attorney. Hrg. Trans. p. 245. That is in complete contradiction to Calvert LaFollette and Carolyn LaFollette's signature dated January 14, 2010, on the January 6, 2010 letter. ODC Ex. 1, p. 6-7. Respondent never followed up with Calvert LaFollette or Carolyn LaFollette about their January 14, 2010 signatures on the January 6, 2010 letter. Hrg. Trans. p. 247. When Respondent received the signed January 6, 2010 letter, he wrote on the letter "Calvert LaFollette billing" and placed it into the LaFollettes' billing file. Hrg. Trans. p. 246. This occurred after Respondent stated that he had been told by Calvert LaFollette that he was finding another attorney. Further, Respondent testified that there was no disengagement letter to either of the LaFollettes. Hrg. Trans. p. 250. It is also clear that attorney Craig Kay, Esquire, became involved in the LaFollettes case in May of 2010 and requested the client files from Respondent in early June of 2010. Respondent never sent any letter or client files to Calvert LaFollette or Carolyn LaFollette from January 2010 to June of 2010.

Carolyn LaFollette testified that her signing on January 14, 2010 meant that Respondent "was going to continue to represent Calvert. I really didn't think of – the fact that he was going to represent me unless I needed him for something later." Hrg. Trans. p. 20. Carolyn LaFollette also testified that she had sexual relations with Respondent prior to her signing the May 13, 2010 "Postnuptial Agreement." Hrg. Trans.

p. 28-29, ODC Ex. 25, p. 225-242. That is certainly before early June of 2010 when Craig Kay, Esquire, sought the LaFollette's client files from Respondent. Carolyn LaFollette testified that she was concerned about starting a sexual relationship with

Respondent "[b]ecause at the time technically he was our attorney. . ." Hrg. Trans. p. 30.

Respondent's own testimony was that he had sexual relations with Carolyn LaFollette starting in March or April of 2010 until May of 2010. Hrg. Trans. p. 253-254. It is clear that Respondent was the attorney for Carolyn LaFollette and Calvert LaFollette during that time.

Carolyn LaFollette acknowledged that she and Calvert LaFollette were unable to come to an agreement about who would be guardian of their children if something should happen to them and that prevented Respondent from continuing the estate planning process. Hrg. Trans. p. 36-37. However, she also stated that Respondent indicated that they could work on that later. Hrg. Trans. p. 36-37. Attorneys do not stop representing clients because the clients did not agree on a specific issue. In this case, it was understood that the clients would continue to work on the issue and get back to Respondent. Further, Carolyn LaFollette indicated that when she discussed the value of the cabin, Respondent "agreed it was worth more." Hrg. Trans. p. 21. Carolyn LaFollette then obtained another appraisal which found a higher value for the property. Hrg. Trans. p. 22. Carolyn LaFollette and Calvert LaFollette were still clients of Respondent and Respondent was giving advice to Carolyn LaFollette which harmed his other client, Calvert LaFollette.

Calvert LaFollette testified that Respondent knew he and Carolyn LaFollette were going through a divorce but Respondent “suggested that he could represent both of us.” Hrg. Trans. p. 96. Calvert LaFollette believed Respondent to still be his attorney on January 14, 2010, even though Respondent “probably wasn’t going to do that much work since [Calvert LaFollette] told [Respondent] [Calvert LaFollette] was going to try to find another one.” Hrg. Trans. p. 101. Calvert LaFollette stated that Respondent’s “representation was a group representation” of the whole family. Hrg. Trans. p. 106. Respondent had access to financial information about Calvert LaFollette through this group representation. Hrg. Trans. p. 107. Calvert LaFollette never received any correspondence from Respondent after signing the January 6, 2010 letter on January 14, 2010. Hrg. Trans. p. 122-123.

B. Respondent acted intentionally and knowingly.

There is no evidence to suggest that Respondent did not act intentionally or knowingly. Respondent intentionally contacted Carolyn LaFollette for personal conversations that lead to the sexual relationship. Respondent even bought a cell phone for Carolyn LaFollette so they could have private conversations with each other. Hrg. Trans. p. 250. These conversations all occurred while Respondent was representing both Calvert LaFollette and Carolyn LaFollette. Furthermore, Respondent acted in an intentional manner when he attempted to cover his improper relationship with Carolyn LaFollette by stating that the attorney client relationship between him and the LaFollettes ended on January 10, 2010. It is clear that both Calvert LaFollette and Carolyn

LaFollette considered Respondent to be their attorney by their signature dated January 14, 2010. Respondent's attempt to say his representation ended on January 10, 2010, is not supported by the evidence.

C. The amount of real injury is great.

Respondent should have been aware that initiating sexual relations with his client, Carolyn LaFollette who was also his client, Calvert LaFollette's wife would create a conflict of interest. Further, Respondent did not recognize the consequence of his actions when he had the sexual relations with his client Carolyn LaFollette who was also the wife of his client, Calvert LaFollette. Respondent's objectivity in the case was clearly flawed. This type of misconduct clearly reflects adversely upon the reputation of the Bar and lawyers in general. Calvert LaFollette testified that he did not think this was something his attorney could do. Hrg. Trans. p. 116-117. In fact, Calvert LaFollette stated that this affected his perception of attorneys because he does not have a lot of trust for them now. Hrg. Trans. p. 120-121. Calvert LaFollette was also harmed by the higher value that Carolyn LaFollette received on the cabin.

D. There are several aggravating and mitigating factors present.

Aggravating factors are considerations enumerated under Rule 3.16 of the Rules of Lawyer Disciplinary Procedure for the Court to examine when considering the imposition of sanctions. Elaborating on this rule, the Scott Court held "that aggravating factors in a

lawyer disciplinary proceeding 'are any considerations, or factors that may justify an increase in the degree of discipline to be imposed.'" Lawyer Disciplinary Board v. Scott, 213 W.Va. 216, 579 S.E. 2d 550, 557 (2003) *quoting ABA Model Standards for*

Imposing Lawyer Sanctions, 9.21 (1992). In this matter, the aggravating factors are Respondent's refusal to acknowledge the wrongful nature of his misconduct, his false statements during this proceeding, and his substantial experience in the practice of law.

The Scott Court also adopted mitigating factors in a lawyer disciplinary proceeding and stated that mitigating factors "are any considerations or factors that may justify a reduction in the degree of discipline to be imposed." Lawyer Disciplinary Board v. Scott, 213 W.Va. 216, 579 S.E.2d 550, 557 (2003). The following mitigating factors are present: absence of a prior disciplinary record and reputation. Respondent has been licensed to practice law in West Virginia since October 3, 1994, and has no prior discipline from either the Investigative Panel of the Lawyer Disciplinary Board or the West Virginia Supreme Court of Appeals.

IV. SANCTION

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syllabus Pt. 3, *in part*, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984), *cited in* Committee on Legal Ethics v. Morton, 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).

Pursuant to Rule 4.32 of ABA Model Standards for Imposing Lawyer Sanctions, “[s]uspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.” It is clear from the evidence that Respondent knew of the conflict of interest in representing both Calvert LaFollette and Carolyn LaFollette and in having a sexual relationship with a client who was also a client's spouse. However, Respondent never disclosed to either Calvert LaFollette or Carolyn LaFollette the nature of the conflict.

Respondent's violations in this case are extremely egregious and touch the very essence of the public's perception of the legal profession. This is not a case of simple negligence and neglect. Respondent had sexual relations with a client who was also a

client's wife. Respondent attempted to deny his role as the attorney for Calvert LaFollette and Carolyn LaFollette but the evidence shows that he was their attorney while he had sexual relations with Carolyn LaFollette.

The Supreme Court of Appeals for West Virginia has in the past dealt with an attorney having sex with a client's wife in Lawyer Disciplinary Board v. Artimez, 208 W.Va. 288, 540 S.E.2d 156 (2000). In that case, the attorney's client and his wife had separated when the attorney began the relationship with the client's wife. More importantly, there was no attorney client relationship between the attorney and the client's wife. In this case, Respondent was representing Carolyn LaFollette as well as Calvert LaFollette as evidenced by the January 14, 2010 signing of the January 6, 2010 letter. A new attorney, Craig Kay, Esquire, was not hired until June of 2010.

“As soon as the client has expressed a desire to employ an attorney, and there has been a corresponding consent on the part of the attorney to act for him in a professional capacity, the relation of attorney and client has been established; and all dealing thereafter between them relating to the subject of the employment will be governed by the rules applicable to such relation.” Syllabus Point 1, Keenan v. Scott, 64 W.Va. 137, 61 S.E. 806 (1908).

In this case, it is clear by the September 12, 2009 letter that Respondent was representing Calvert LaFollette and Carolyn LaFollette. When the LaFollettes could not come to an agreement regarding the guardianship for their children, Respondent's representation did not end. Respondent was told by Carolyn LaFollette that she was

separating from and divorcing Calvert LaFollette in late December of 2009 or early January of 2010. Respondent sent the January 6, 2010 letter in order to obtain a waiver so that he could continue to represent the both of them. Calvert LaFollette and Carolyn

LaFollette both signed the letter on January 14, 2010. Respondent maintains that he had a conversation with Calvert LaFollette on January 10, 2010 during which Calvert LaFollette made it clear that he was going to find another attorney. However, Respondent did not send any follow up letter or disengagement letter after that conversation. In fact, when Respondent received the signed January 6, 2010 letter from the LaFollettes, he placed the document in his file for billing. That act alone shows that Respondent knew he was still representing the LaFollettes. It was not until early June of 2010 that Respondent was contacted by another attorney for the client files.

The Court did not find a violation of Rule 1.7 in the Artimez case. In Artimez, the attorney did not believe a conflict existed when he began a consensual relationship with a client's wife after the client and his wife had separated. In this case, not only was Respondent the attorney for Calvert LaFollette but he also had an attorney client relationship with Carolyn LaFollette. Respondent gave advice to client Carolyn LaFollette regarding her divorce from Calvert LaFollette which harmed his client Calvert LaFollette. Calvert LaFollette was upset when he found out about the sexual relationship between Respondent and Carolyn LaFollette as Respondent was his attorney.

West Virginia has also indefinitely suspended an attorney for having sexual conversations with a client's wife while the client was incarcerated. See Lawyer

Disciplinary Board v. Perry, No. 10-4006 (11/22/11) (Unreported). Other jurisdictions have suspended attorneys for attempting to have sexual relations with their clients and for having sex with a client's spouse. See In re Witherspoon, 203 N.J. 343, 3 A.3d 496 (N.J. 2010) (an attorney suspended for one (1) year for offering discounted legal fees to clients in exchange for sexual favors of various kinds); In re Disciplinary Proceedings Against Inglimo, 305 Wis.2d 71, 740 N.W.2d 125 (Wis. 2007) (an attorney suspended for three (3) years for having sex with client's spouse while client participated in the sexual encounter and using drugs with client).

An attorney holds a special position with a client, and the attorney clearly holds the power in the situation. In this case, while his client Calvert LaFollette was going through a separation with Carolyn LaFollette, Respondent engaged in a sexual relationship with his client Carolyn LaFollette who was also his client's wife. Not only that, Respondent continued to represent his client in Court matters for months while he continued to have sexual conversations with the client's then wife. However, Respondent's misconduct in this case is not limited to his sexual relations with his client who was also his client's wife. Respondent also attempted to deny that he was the attorney for Calvert LaFollette and Carolyn LaFollette and provide advice to client Carolyn LaFollette which harmed his client Calvert LaFollette. This type of misconduct is an abuse of Respondent's position as a lawyer which causes concern over Respondent's fitness to practice law.

For the public to have confidence in our disciplinary and legal systems, lawyers

who engage in the type of misconduct exhibited by Respondent must be removed from the practice of law for some period of time. A license to practice law is a revocable privilege and when such privilege is abused, the privilege should be revoked. Such sanction is also necessary to deter other lawyers from engaging in similar conduct and to restore the faith of the victims in this case and of the general public in the integrity of lawyers and the legal profession.

V. RECOMMENDED SANCTIONS

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. It is the position of the Hearing Panel Subcommittee that for his conduct of having sexual relations with his client Ms. LaFollette who was also his client Mr. LaFollette's wife that Respondent's license should be suspended for ninety (90) days.

Sanctions are not imposed only to punish the attorney, but also are designed to reassure the public's confidence in the integrity of the legal profession and to deter other lawyers from similar conduct. Committee on Legal Ethics v. White, 189 W.Va. 135, 428 S.E.2d 556 (1993); Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987); Committee on Legal Ethics v. Roark, 181 W.Va. 260, 382 S.E.2d 313 (1989); Lawyer Disciplinary Board v. Friend, 200 W.Va. 368, 489 S.E.2d 750 (1997); Lawyer Disciplinary Board v. Keenan, 208 W.Va. 645, 542 S.E.2d 466 (2000)W.Va. 645, 542

S.E.2d 466 (2000).

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).

For the reasons set forth above, the Hearing Panel Subcommittee recommends the following sanctions:

1. That Respondent's law license be suspended for ninety (90) days;
2. That Respondent not be required to petition for reinstatement pursuant to Rule 3.31 of the Rules of Lawyer Disciplinary Procedure;
3. That, upon reinstatement, Respondent's practice be supervised for a period of one (1) year by an attorney agreed upon between the Office of Disciplinary Counsel and Respondent;
5. That during Respondent's period of suspension, that Respondent shall be required to undergo an independent psychiatric evaluation to determine whether he is fit to engage in the practice of law and is further required to comply with any stated treatment protocol; and
6. That Respondent be ordered to reimburse the Lawyer Disciplinary Board the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Accordingly, the Hearing Panel Subcommittee recommends that the Supreme Court of Appeals adopt these findings of fact, conclusions of law, and recommended sanctions as set forth above. Both the Office of Disciplinary Counsel and Respondent

have the right consent or object pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary Procedure.



Paul T. Camilletti, Esquire
Chairperson of the
Hearing Panel Subcommittee

Date: 4/15/14



Steven K. Nord, Esquire
Hearing Panel Subcommittee

Date: 4/7/2014



Mrs. Priscilla M. Haden
Hearing Panel Subcommittee

Date: March 27, 2014