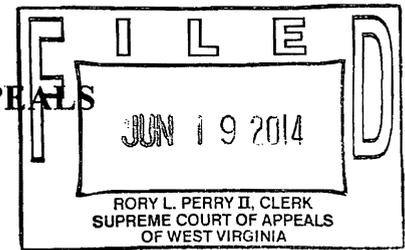


BEFORE THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA



Re: KERRY A. NESSEL, a member of  
The West Virginia State Bar

Bar No.: 7916  
Supreme Court No.: 13-0491  
I.D. No.: 10-01-143

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REPORT OF THE HEARING PANEL SUBCOMMITTEE

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I. PROCEDURAL HISTORY

Formal charges were filed against Respondent Kerry A. Nessel with the Clerk of the Supreme Court of Appeals on or about May 13, 2013, and served upon Respondent via certified mail by the Clerk on May 17, 2013. Disciplinary Counsel filed her mandatory discovery on or about June 6, 2013. Respondent filed his Answer to the Statement of Charges on or about June 19, 2013. Respondent then provided his mandatory discovery on July 13, 2013.

At the scheduling conference held on May 30, 2013, Respondent waived his right to have a hearing within 120 days of the service of the Statement of Charges, and the matter was set for hearing on October 8, 2013. On or about October 6, 2013, Chairperson Morgan notified the parties that he was not available for the October 8, 2013 hearing date, and the matter was rescheduled for November 26, 2013. Because Disciplinary Counsel's witnesses were not available for the November 26, 2013 hearing date, the matter was continued to February 19, 2014. New evidence was sent to the Office of Disciplinary Counsel and was provided in discovery to Respondent on or about February 12, 2014. Respondent's counsel

filed for a continuance of the February 19, 2014 hearing date and, by order entered February 20, 2014, the matter was set for hearing on May 13, 2014. In addition, pursuant to deadlines established in the scheduling order entered on February 20, 2014, Disciplinary Counsel then provided additional discovery on or about April 17, 2014.

Thereafter, this matter proceeded to hearing in Charleston, West Virginia, on May 13, 2014. The Hearing Panel Subcommittee was comprised of J. Miles Morgan, Esquire, Chairperson, Steven K. Nord, Esquire, and Mrs. Priscilla M. Braden, Layperson. Andrea J. Hinerman, Senior Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. S. Benjamin Bryant appeared on behalf of Respondent, who also appeared. The Hearing Panel Subcommittee heard testimony from Lori Nohe, Warden of Lakin Correctional Center, and Respondent, and ODC Exhibits 1-10, 12, 15, 16, 18-20, 22, 23, 26, 29-36, 41, 45-48, and 51<sup>1</sup>; Respondent's Exhibits 13, 22, 23, 25 and 26; and Joint Exhibit I were admitted into evidence.

The Hearing Panel Subcommittee conferred in executive session to discuss the "Stipulations and Recommended Discipline", submitted as Joint Exhibit 1 for the Panel's consideration. The Hearing Panel Subcommittee then advised the parties that the Panel deemed the facts and sanctions set forth therein to be appropriate and, therefore, would accept the stipulations as presented. The Hearing Panel Subcommittee directed Disciplinary Counsel to prepare an order for the Panel's signature setting forth this ruling and making the same recommendation for sanctions to the Supreme Court of Appeals of West Virginia.

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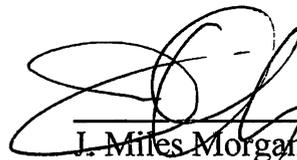
<sup>1</sup>See Hearing Transcript, Page 131. Exhibit 51 is also known as Volume III and the same was admitted.

## II. RECOMMENDATION AS TO DISCIPLINE

The Hearing Panel Subcommittee accepts the facts, conclusions and recommendations as set forth in Joint Exhibit 1 and hereby makes the following recommendation to the Supreme Court of Appeals of West Virginia:

- A. That Respondent shall be reprimanded;
- B. That Respondent shall attend an additional 9 (nine) hours of CLE in the area of ethics and law office management over and above his otherwise required CLE hours to be completed during the next reporting period;
- C. That Respondent's practice shall be supervised for a period of one (1) year by an attorney agreed upon between the Office of Disciplinary Counsel and Respondent. The goal of the supervised practice will be to improve the quality and effectiveness of Respondent's law practice to the extent that Respondent's sanctioned conduct is not likely to recur; and
- D. That Pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, Respondent shall pay costs of this disciplinary proceeding.

Accordingly, the Hearing Panel Subcommittee recommends that the Supreme Court of Appeals adopt the findings and conclusions as set forth in Joint Exhibit 1, and recommended sanctions as set forth above.

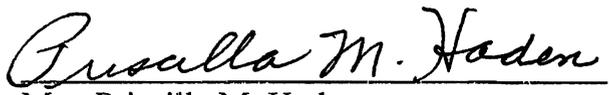


J. Miles Morgan, Esquire, Chairperson  
Hearing Panel Subcommittee

Date: June 11, 2014

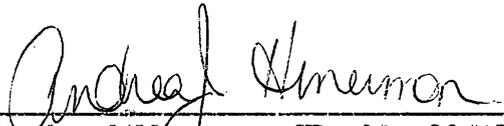
  
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Steven K. Nord, Esquire  
Hearing Panel Subcommittee

Date: 6/13/2014

  
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Mrs. Priscilla M. Haden  
Hearing Panel Subcommittee

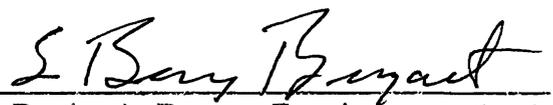
Date: June 4, 2014

**Prepared by:**

  
\_\_\_\_\_  
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Date: May 30, 2014

**Read and Approved:**

  
\_\_\_\_\_  
S. Benjamin Bryant, Esquire *WVSB 520*  
Counsel for Respondent

Date: June 2, 2014