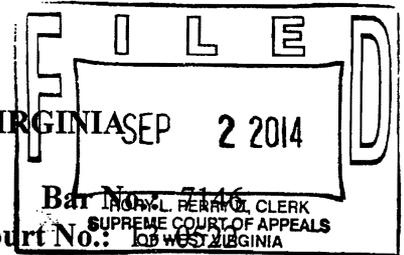


BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



In Re: APRIL D. CONNER, a member of
The West Virginia State Bar

Supreme Court No.:
I.D. No.: 11-03-499, 12-03-513,
12-03-557

REPORT AND RECOMMENDATION OF THE HEARING PANEL SUBCOMMITTEE

I. PROCEDURAL HISTORY

Formal charges were filed against Respondent April D. Conner ("Respondent") with the Clerk of the Supreme Court of Appeals of West Virginia ("Supreme Court") on or about May 22, 2013, and served upon Respondent via certified mail by the Clerk on May 24, 2013. Disciplinary Counsel filed her mandatory discovery on or about June 13, 2013. Respondent filed her Answer to the Statement of Charges on or about June 24, 2013. Respondent failed to provide her mandatory discovery, which was due on or before July 15, 2013. Disciplinary Counsel then filed a Motion to Exclude Testimony of Witnesses and Documentary Evidence And/Or Testimony of Mitigation Factors on August 19, 2013. The Hearing Panel Subcommittee granted this motion at the telephonic prehearing held on September 9, 2013.

Thereafter, this matter was heard in Charleston, West Virginia, on November 21, 2013. The Hearing Panel Subcommittee was comprised of Richard M. Yurko, Jr., Esquire, Chairperson; Sean Francisco, Esquire; and Cynthia Pyles, layperson. Joanne Vella Kirby, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. Respondent appeared *pro se*. The Hearing Panel Subcommittee heard testimony from Shawna Swiger, Nicholas Robey, and Respondent. In addition, Office of Disciplinary Counsel Exhibits 1-28 were admitted into evidence.

Based upon the evidence and the record, the Hearing Panel Subcommittee makes the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a lawyer practicing in West Union, Doddridge County, West Virginia¹, and, as such, is subject to the disciplinary jurisdiction of the Supreme Court and its properly constituted Lawyer Disciplinary Board. Respondent was admitted to The West Virginia State Bar on September 30, 1996.

COUNT I Complaint of Nicholas Robey I.D. No. 11-03-499

2. Respondent was appointed to represent Complainant Nicholas Robey (“Complainant”) in a criminal matter. (Transcript at p. 29, lines 9-14, p. 72, lines 2-5; ODC Exhibit 1).

3. On May 4, 2010, Complainant was indicted and charged with felony murder, conspiracy to commit burglary, and grand larceny. (Transcript at p. 31, lines 2-13; ODC Exhibit 11).

4. On August 5, 2010, in the Circuit Court of Harrison County, West Virginia, Complainant pled guilty to the felony offense of felony murder. Pursuant to the terms of his plea agreement, the parties requested that the Court make a recommendation of mercy. The parties further acknowledged their understanding that the Court was not bound by the aforementioned recommendation. (Transcript at p. 31, lines 14-24, p. 32, lines 1-11, p. 74, lines 12-24, p. 75, lines 1-11; ODC Exhibits 10 and 11).

¹ In July, 2013, Respondent began working as an assistant prosecutor in the Doddridge County Prosecutor’s Office. (Transcript at p. 62, lines 8-13). At all times relevant to the formal charges filed against Respondent, she practiced law in Clarksburg, Harrison County, West Virginia.

5. By order entered August 19, 2010, Circuit Judge James A. Matish ordered that a hearing would be held on November 10, 201, at which time the Court would accept Complainant's guilty plea and sentence him, or would schedule the matter for further proceedings. (ODC Exhibits 10 and 11).

6. On or about November 4, 2010, the Court ordered that Complainant's sentencing hearing would be continued from November 10, 201 until February 17, 2011. Thereafter, on or about February 4, 2011, the Court again ordered that Complainant's sentencing hearing would be continued, and rescheduled the hearing for April 6, 2011. On or about April 5, 2011, the Court once again continued Complainant's sentencing hearing and rescheduled the same for May 19, 2011. (Transcript at p. 75, lines 17-24, p. 76, lines 1-5; ODC Exhibit 11).

7. On or about May 19, 2011, Complainant appeared before the Court where he was questioned whether it was still his intent to enter a guilty plea to the felony murder count of the indictment.² Complainant maintained his guilty plea. (Transcript at p. 32, lines 20-24, p. 33, lines 1-6, p. 76, lines 6-12; ODC Exhibit 11).

8. By order entered June 1, 2011, Judge Bedell ordered that Complainant's sentencing would take place on August 26, 2011. Thereafter, on July 27, 2011, Judge Matish entered a Transportation Order, which changed Complainant's sentencing date to August 2, 2011. (Transcript at p. 35, lines 1-15, p. 76, lines 13-24, p. 77, lines 1-19; ODC Exhibit 11).

9. On August 2, 2011, Complainant appeared before the Court for his sentencing. Despite the parties' recommendation for mercy, the Court noted that it would not make a recommendation that Complainant be considered for parole, and accordingly, sentenced

² According to the Respondent, Judge Matish had presided over the plea hearing that occurred on August 5, 2010. Due to a family emergency, however, Judge Matish left the state for a period of time. Judge Bedell covered the case in Judge Matish's absence, including the May 19, 2011 status hearing wherein Mr. Robey was questioned whether it remained his intent to plead guilty to felony murder. (Transcript at p. 45, lines 6-18, p. 76, lines 6-24, p. 77, lines 1-14).

Complainant to life in prison. (Transcript at p. 33, lines 7-9, p. 35, lines 6-8, p. 36, lines 23-24, p. 37, line 1, p. 82, lines 1-6; ODC Exhibit 11).

10. On or about October 24, 2011, Complainant filed a complaint with the Office of Disciplinary Counsel. Complainant alleged that he and Respondent had agreed that she would appeal his sentence, and that she failed to do so.³ Complainant further alleged that Respondent failed to communicate with him, or with his mother, despite repeated attempts to reach Respondent following his August 2, 2011 sentencing. Finally, Complainant alleged that Respondent provided inadequate counsel by failing to comply with his requests during pre-sentencing, making no attempt to contact his family to participate in his sentencing hearing, and failing to appeal his sentence. (Transcript at p. 29, lines 1-8, p. 35, lines 15-24, p. 36, lines 1-19, p. 37, lines 12-24, p. 38, lines 1-24, p. 39, lines 1-24, p. 40, lines 1-24, p. 41, lines 1-16; ODC Exhibit 1).

11. By letter dated October 28, 2011, the Office of Disciplinary Counsel sent Respondent a copy of the Complaint and directed her to file a response within twenty (20) days. (Transcript at p. 83, lines 17-24, p. 84, lines 1-2; ODC Exhibit 2).

12. After receiving no response, on or about December 12, 2011, the Office of Disciplinary Counsel sent a second letter by certified mail and first class mail directing Respondent to file a response by December 28, 2011, and advising her that her failure to do so could result in a subpoena being issued for her appearance at the Office of Disciplinary Counsel for a statement, or the allegations in the Complaint would be deemed admitted and the matter

³ Although in the Complaint, Complainant alleged that she and Respondent had agreed that she would appeal his sentence, at the hearing, when asked if he told Respondent that he wished to appeal his sentence after having been sentenced, Complainant testified "I can't remember." (Transcript at p. 37, lines 19-24, p. 38, line 1). Further, when asked if he told Respondent that he wanted to appeal, he stated "I think so." (Transcript at p. 40, lines 11-13). Complainant testified that he assumed that Respondent would appeal his sentence "because there was nothing I could lose by filing one." (Transcript at p. 39, lines 19-24, p. 40, lines 1-10).

would be referred to the Investigative Panel of the Lawyer Disciplinary Board. (Transcript at p. 84, lines 7-22; ODC Exhibit 3).

13. Thereafter, Respondent responded to the Complainant's Complaint by way of letter dated December 27, 2011, which was received by the Office of Disciplinary Counsel on December 29, 2011. (Transcript at p. 84, lines 23-24, pg. 85, line 1; ODC Exhibit 4).

14. In response to the Complaint, Respondent maintained that she and Complainant had discussed the subject of an appeal to whatever sentence Complainant would receive both prior to his acceptance of the plea agreement and prior to his sentencing. Respondent maintained that at all times, "Mr. Robey expressed his understanding of [sic] that even if he received life without the recommendation of mercy, there would be no appeal." (Transcript at p. 85, lines 2-14, p. 138, lines 17-24, p. 139, lines 1-5; ODC Exhibit 4). At the hearing, however, Respondent acknowledged that pursuant to the language of the plea agreement, Complainant could have appealed his sentence without violating the terms of the plea agreement, and that Complainant testified that he wanted to appeal his sentence. (Transcript at p. 140, lines 11-24, p. 141, lines 1-24, p. 142, lines 1-24, p. 143, lines 1-12).

15. Additionally, Respondent maintained that she had inquired of Complainant whether his mother would attend his sentencing hearing to speak on his behalf, and that Complainant informed her that his mother "did not have enough notice to make arrangements to travel from North Carolina to attend his sentencing hearing." Moreover, Respondent maintained that Complainant's father attended his sentencing hearing, but declined to address the Court, as he advised Respondent that he did not believe he could do so. (Transcript at p. 85, lines 15-22; ODC Exhibit 4).

16. Although Respondent denied that she failed to contact Complainant or that she had inadequate communication with him throughout his case, Respondent testified that she did not see or speak with Complainant any time after he was sentenced. Complainant also testified that Respondent did not communicate with him at all after his sentencing, despite his attempts to contact her. (Transcript at p. 40, line 24, p. 41, lines 1-16, p. 85, lines 1-3, p. 138, lines 13-16; ODC Exhibit 4).

17. The Supreme Court of Appeals of West Virginia (“Supreme Court”) has held that indigent criminal defendants have a right to appeal convictions, and has further held that “[t]he obligation of a court-appointed attorney to his client is not discharged merely by his informing such client of his determination that an appeal is without merit and frivolous; it is the appellate court, not counsel, after a full examination of all the proceedings, which makes that determination.” Syl. Pt. 3, Turner v. Haynes, 162 W. Va. 33, 245 S.E.2d 629 (1978).

18. Because Respondent failed to abide by Complainant’s decisions concerning the objectives of representation in this matter, in that she failed to appeal his sentence, Respondent has violated Rule 1.2(a) of the Rules of Professional Conduct, which states:

Rule 1.2 Scope of representation.

(a) A lawyer shall abide by a client’s decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client’s decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

19. Additionally, because she failed to appeal Complainant’s sentence, Respondent violated Rule 1.3 of the Rules of Professional Conduct, which states:

Rule 1.3 Diligence.

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

20. Furthermore, because Respondent failed to keep Complainant informed as to the status of his case, and failed to respond to his attempts to communicate with her following his sentencing hearing, Respondent violated Rules 1.4(a) and 1.4(b) of the Rules of Professional Conduct, which state as follows:

Rule 1.4. Communication.

(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.

COUNT II
Complaint of the Office of Disciplinary Counsel
I.D. No. 12-03-513

21. On or about April 28, 2006, a Doddridge County, West Virginia petit jury found Jonathan David Boatwright guilty of first degree sexual assault, sexual abuse by a custodian, and incest, which resulted in a sentence of 30-70 years total. (ODC Exhibit 12).

22. On or about June 5, 2007, the Supreme Court denied Mr. Boatwright's direct appeal without opinion. (Id.)

23. Upon denial of Mr. Boatwright's direct appeal, on or about April 7, 2008, he filed a Post Conviction Petition for *Writ of Habeas Corpus* and a Motion for Appointment of Counsel. (Id.)

24. Thereafter, on or about October 1, 2008, the Circuit Court of Doddridge County appointed Brian Carr to represent Mr. Boatwright with respect to his post conviction

petition. Additionally, the Court entered that leave would be granted to file a Supplemental Petition for Post-Conviction Relief, which was subsequently filed. (Id.)

25. On or about July 15, 2011, the Circuit Court of Doddridge County refused Mr. Boatwright's post conviction petition. (Id.)

26. On or about August 11, 2011, Mr. Boatwright, *pro se*, filed a timely notice of appeal from the Circuit Court of Doddridge County's July 15, 2011 order. On or about that same date, Mr. Boatwright filed a Motion for Appointment of Counsel for Appeal to the Circuit Court. (Id.)

27. On or about March 19, 2012, the Circuit Court of Doddridge County granted Mr. Boatwright's Motion for Appointment of Counsel for Appeal, and appointed Respondent to represent him in his appeal for denial of *habeas corpus*. (Transcript at p. 95, lines 2-6; ODC Exhibit 12).

28. On or about April 23, 2012, the Supreme Court entered an Amended Scheduling Order⁴ that directed Respondent to perfect Mr. Boatwright's appeal on or before June 16, 2012. (Transcript at p. 95, lines 7-12; ODC Exhibit 12).

29. When Respondent failed to perfect the appeal, on or about July 9, 2012, the Attorney General's Office of the State of West Virginia filed a Motion to Dismiss Mr. Boatwright's case. (Transcript at pg. 95, lines 13-21; ODC Exhibit 12).

30. Thereafter, on or about July 10, 2012, the Supreme Court, in vacation, refused the aforementioned Motion to Dismiss, and ordered Respondent to perfect Mr. Boatwright's appeal within ten days of her receipt of the Court's order, or the appeal would be

⁴ The Supreme Court had entered an initial Scheduling Order on or about August 18, 2011. The Amended Scheduling Order was entered following Mr. Boatwright's November 9, 2011 *pro se* Motion for Enlargement of Time to Appeal, which the Court granted. (ODC Exhibit 12).

subject to dismissal and other sanctions. (Transcript at p. 95, lines 22-24, p. 96, lines 1-6; ODC Exhibit 12).

31. Again, Respondent failed to perfect Mr. Boatwright's appeal. Accordingly, on or about September 6, 2012, the Supreme Court, on its own motion, proceeded to consider sanctions for Respondent's failure to perfect Mr. Boatwright's appeal, as ordered. The Supreme Court commanded and directed Respondent to appear before it on October 17, 2012 in order to show cause as to why she should not be held in contempt for her failure to perfect the appeal, unless sooner mooted by perfection of the appeal. (Transcript at p. 96, lines 7-24; ODC Exhibit 12).

32. By letter dated September 10, 2012, Clerk of Court Rory L. Perry II and Deputy Clerk of Court Edyth Nash Gaiser, at the direction of the Supreme Court, requested that the Office of Disciplinary Counsel consider opening a complaint against Respondent. (Transcript at pg. 97, lines 1-7; ODC Exhibit 12).

33. Accordingly, on or about September 18, 2012, pursuant to the Rule 2.4(a) of the Rules of Lawyer Disciplinary Procedure, the Office of Disciplinary Counsel opened the instant Complaint against Respondent. Respondent's response was due on or about October 11, 2012. (Transcript at p. 97, lines 8-12; ODC Exhibit 13).

34. On or about October 12, 2012, Respondent telephoned the Office of Disciplinary Counsel and requested an extension of time to file a response to the September 18, 2012 letter, which was granted. Therefore, Respondent's response was due on or about October 22, 2012. (Transcript at p. 97, lines 13-21; ODC Exhibit 14).

35. Respondent failed to appear before the Supreme Court, as ordered, for the show cause hearing scheduled for October 17, 201. (Transcript at p. 97, lines 22-24, p. 98, line 1; ODC Exhibit 15).

36. Accordingly, on or about October 18, 2012, the Supreme Court entered an order wherein it found Respondent guilty of contempt of the Supreme Court by failing to perfect Mr. Boatwright's appeal and for failure to appear before the Supreme Court as ordered. The Supreme Court also held that Respondent could purge herself of contempt by properly perfecting the appeal within seven calendar days of her receipt of service of the October 18, 2012 order. The Supreme Court further ordered that Respondent be fined \$250.00 per day for each day that she continued to be in contempt for failure to perfect the appeal herein. (Transcript at p. 98, lines 2-15; ODC Exhibit 15).

37. After receiving no response to its September 18, 2012 correspondence, on or about October 24, 2012, the Office of Disciplinary Counsel sent a second letter by certified and first class mail directing Respondent to file a response by November 5, 2012, and advising her that her failure to do so could result in a subpoena being issued for her appearance at the Office of Disciplinary Counsel for a statement, or the allegations in the Complaint would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board. (Transcript at p. 98, lines 16-24, p. 99, lines 1-4; ODC Exhibit 16).

38. On or about October 25, 201, Respondent filed Mr. Boatwright's Petition for Appeal and tendered a check in the amount of \$1,500.00, which represented the fine imposed by the Supreme Court as noted above. (Transcript at p. 99, lines 5-11; ODC Exhibit 17).

39. Therefore, on or about November 4, 2012, Respondent responded to the Complaint opened by the Office of Disciplinary Counsel. In her response, she stated that "while

there are several explanations, there is truly no excuse for having [failed] to perfect the appeal on Mr. Boatwright's behalf in the time that passed." On her behalf, Respondent cited the fact that she is a solo practitioner working in multiple counties and has a busy case load, yet she acknowledged that "none of these things should have resulted in the missing of the deadlines in the *Boatwright* case as I did." Respondent concluded by apologizing, both to Mr. Boatwright and to the Supreme Court. (Transcript at p. 99, lines 12-24, p. 100, lines 1-2; ODC Exhibit 18).

40. In her sworn statement taken February 25, 2013, Respondent acknowledged that she had not had a conversation with Mr. Boatwright before she filed his appeal, and that there was "not one aspect of this case that [she] did not mismanage." Moreover, Respondent acknowledged that although she believed that she sent Mr. Boatwright copies of "everything," including "correspondence apologizing profusely to let him know what's going on and to let him know that his appeal was in fact perfected," she still had not spoken or met with Mr. Boatwright. (Transcript at p. 100, lines 3-24, p. 101, lines 1-14; ODC Exhibit 9).

41. In her response to the Complaint opened by the Office of Disciplinary Counsel and at the hearing, Respondent admitted all of the allegations concerning the Complaint as set forth in the Statement of Charges. (Transcript at p. 93, lines 5-12, p. 101, lines 15-24, p. 102, lines 1-20).

42. Because Respondent failed to meet numerous deadlines established by the Supreme Court in order to perfect Mr. Boatwright's appeal, Respondent violated Rules 1.3 and 3/2 of the Rules of Professional Conduct, which state:

Rule 1.3. Diligence.

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

and

Rule 3.2. Expediting Litigation.

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

43. Furthermore, because Respondent failed to keep Mr. Boatwright informed as to the status of his appeal, Respondent violated Rule 1.4(a) of the Rules of Professional Conduct, which provides as follows:

Rule 1.4. Communication.

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

44. Finally, because Respondent failed to appear before the Supreme Court, as ordered, for the show cause hearing scheduled for October 17, 2012, Respondent violated Rule 8.4(d) of the Rules of Professional Conduct, which provides as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice.

Rule 1.3 Diligence.

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

COUNT III
Complaint of Shawna S. Drum
I.D. No. 12-03-557

45. Complainant Shawna S. Drum⁵ (“Complainant”) retained Respondent to represent her in a matter in the Harrison County Family Court in Harrison County, West Virginia. When the Family Court did not rule in Complainant’s favor, Respondent appealed the judge’s ruling to the Circuit Court of Harrison County, which affirmed the decision of the Family Court. (Transcript at p. 8, lines 22-24, p. 9, lines 1-13, p. 103, lines 12-24, p. 104, lines 1-3; ODC Exhibit 22).

⁵ Complainant’s name is now Shawna Swiger. (Transcript at p. 8, lines 1-3).

46. Complainant subsequently retained Respondent again to file another matter in the Harrison County Family Court in or about January of 2012.⁶ Complainant paid Respondent her requested \$2,000.00 retainer fee. At the hearing, Respondent testified that she did not deposit the aforementioned retainer fee into an IOLTA account, but rather deposited the retainer fee into her “regular business account for the firm.” (Transcript at p. 9, lines 17-24, pg. 10, lines 1-24, p. 11, lines 1-24, p. 12, lines 1-17, pg. 104, lines 4-24, p. 105, lines 1-10, p. 108, lines 5-10, p. 119, lines 17-24, p. 120, lines 1-6; ODC Exhibit 22).

47. At the hearing, Complainant testified that the only communication she had with Respondent during the second representation was when Respondent sent Complainant an email message asking her certain questions, to which Complainant responded. Complainant testified that she never heard from Respondent again. Further, Respondent never filed a new petition for relocation on Complainant’s behalf. At the hearing, Respondent testified that she disputed Complainant’s testimony regarding their communication during the second representation, and further testified that she and Complainant discussed the case approximately twice on the telephone and approximately two to three times in person. Respondent acknowledged that she did not provide any proof of such alleged communication to the Office of Disciplinary Counsel. Complainant ultimately discharged Respondent’s services in or about April of 2012. (Transcript at p. 14, lines 7-24, pg. 15, lines 1-24, pg. 16, lines 1-24, pg. 17, lines 1-15, p. 20, lines 19-24, p. 21, lines 1-24, p. 22, lines 1-4, p. 23, lines 13-15, p. 108, lines 11-24, pp. 109-117, lines 1-24, p. 118, lines 1-23; ODC Exhibit 22).

⁶ Respondent had initially filed a petition on Complainant’s behalf at a time when Complainant was engaged to be married. When Complainant married, she chose to file a new petition for relocation based on a change of circumstance. (Transcript at pg. 9, lines 17-22, p. 12, lines 18-24, p. 13, lines 1-6, p. 25, lines 8-14, pg. 103, lines 3-11; ODC Exhibit 22).

48. Complainant requested a refund of Respondent's unearned retainer fee. Respondent failed to respond to Complainant's request. (Transcript at p. 17, lines 10-20, p. 18, lines 13-15, p. 118, line 24, p. 119, lines 1-19, p. 121, lines 23-24, p. 122, lines 1-16; ODC Exhibit 22).

49. Thereafter, Complainant retained new counsel, Linda Hausman, who contacted Respondent and requested that Respondent return Complainant's retainer fee. Respondent testified that although she and Ms. Hausman had discussed Respondent returning Complainant's retainer fee, Respondent had not yet done so. Respondent noted that she had brought with her, to the hearing, a certified check in the amount of \$2,000.00, which she intended to send to Complainant via mail. (Transcript at p. 17, lines 21-24, p. 18, lines 1-15, p. 23, lines 16-24, p. 24, lines 1-10, p. 120, lines 22-24, p. 121, lines 1-24, p. 122, lines 1-16; ODC Exhibit 22).

50. Complainant filed the instant Complaint against Respondent on or about October 15, 2012. (Transcript at p. 8, lines 17-21, p. 122, lines 17-21; ODC Exhibit 22).

51. By letter dated October 24, 2012, the Office of Disciplinary Counsel sent Respondent a copy of the Complaint and directed her to file a response within twenty (20) days. (Transcript at p. 122, lines 22-24, p. 123, lines 1-3; ODC Exhibit 23).

52. After receiving no response, on or about November 14, 2012, the Office of Disciplinary Counsel sent a second letter by certified and first class mail directing Respondent to file a response by November 26, 2012, and that her failure to do so could result in a subpoena being issued for her appearance at the Office of Disciplinary Counsel for a statement, or the allegations in the Complaint would be deemed admitted and the matter would be referred to the

Investigative Panel of the Lawyer Disciplinary Board. (Transcript at p. 123, lines 4-13; ODC Exhibit 25).

53. Once again, Respondent failed to file a verified response to the Complaint (Transcript at p. 123, lines 14-16).

54. Accordingly, a subpoena was issued for Respondent's appearance at the Office of Disciplinary Counsel for her sworn statement to be taken on January 22, 2013. (Transcript at p. 123, lines 17-21; ODC Exhibit 26).

55. On January 22, 2013, Respondent contacted the Office of Disciplinary Counsel via telephone and stated that she would not be able to attend her sworn statement because she was detained while working on multi-disciplinary treatment meetings for clients' abuse and neglect proceedings. Respondent failed to provide the Office of Disciplinary Counsel with the requested verification of such proceedings. (Transcript at p. 123, lines 22-24, p. 124, lines 1-18; ODC Exhibit 27).

56. In her response to the Complaint opened by the Office of Disciplinary Counsel and at the hearing, Respondent admitted the allegations that she violated Rule 8.1(b) of the Rules of Professional Conduct, as contained in the Complaint and as set forth in the Statement of Charges. Moreover, Respondent acknowledged that she had never filed a response to Complainant's Complaint. (Transcript at p. 124, lines 19-24, p. 125, lines 1-14).

57. Because Respondent failed to communicate with her client, Respondent violated Rule 1.4(a) of the Rules of Professional Conduct, which states:

Rule 1.4. Communication.

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

58. Because Respondent agreed to perform certain legal services on behalf of Complainant, but failed to complete the same, and failed to return an unearned fee after being discharged, despite repeated requests for the same, Respondent has violated Rule 1.16(d) of the Rules of Professional Conduct, which states:

Rule 1.16(d). Declining or terminating representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

59. Because Respondent failed to deposit the retainer fee she received from Complainant into her IOLTA account, she violated Rule 1.15(a) of the Rules of Professional Conduct, which states:

Rule 1.15. Safekeeping property.

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with the representation separate from the lawyer's own property. Funds shall be kept in a separate account designated as a "client's trust account" in an institution whose accounts are federally insured and maintained in the state where the lawyer's office is situated, or in a separate account elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

60. Because Respondent has failed to comply with the Office of Disciplinary Counsel's lawful requests for information, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct, which states:

Rule 8.1. Bar admission and disciplinary matters.

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

(b). . . knowingly fail to respond to a lawful demand for information from . . . disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

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, 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. Jorden, 204 W. Va. 495, 513 S.E.2d 722 (1998).

A. Respondent violated duties to her 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 has violated several duties owed to her clients. Respondent violated duties owed to Mr. Robey in that she failed to appeal his sentence; failed to abide by his decisions concerning the objectives of representation; and failed to act with reasonable diligence and promptness in representing him. Respondent also violated her duty of communication with Mr. Robey because she failed to keep him informed as to the status of his case, and failed to respond to his attempts to communicate with her following his sentencing hearing.

Respondent violated duties owed to Mr. Boatwright when she failed to meet numerous deadlines established by the Supreme Court of Appeals of West Virginia in order to perfect his appeal. Respondent failed to act with reasonable diligence and promptness in representing Mr. Boatwright, and failed to make reasonable efforts to expedite litigation consistent with Mr. Boatwright's interests. Additionally, Respondent violated duties owed to the public, the legal system and the profession when she failed to appear before the Supreme Court, as ordered, for the show cause hearing scheduled for October 17, 2012. Respondent's failure to appear before the Supreme Court demonstrated professional misconduct in that she engaged in conduct that is prejudicial to the administration of justice.

Respondent violated duties owed to Ms. Swiger in that she did not communicate with her client, failing to keep Ms. Swiger reasonably informed about the status of her case. Moreover, Respondent did not promptly comply with reasonable requests for information. Additionally, Respondent violated duties owed to Ms. Swiger in that she agreed to perform certain legal services on Ms. Swiger's behalf, and not only failed to do so, but also failed to return an unearned fee after being discharged by Ms. Swiger, despite repeated requests for the same. Furthermore, Respondent violated duties owed to Ms. Swiger when she failed to deposit

Ms. Swiger's retainer fee into her IOLTA account, as she was required to do so. Finally, Respondent violated duties owed to the legal system and the profession when she failed to comply with the Office of Disciplinary Counsel's lawful requests for information during the course of her disciplinary matter.

B. At a minimum, Respondent acted negligently.

"Negligence" as defined by the American Bar Association is the failure of the lawyer to heed to a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

As previously noted, Respondent admitted to all of the allegations set forth in the statement of charges concerning the complaint of Mr. Boatwright, as well as the allegation that she violated Rule 8.1(b) of the Rules of Professional Conduct, in the complaint of Ms. Swiger.

As to the remaining allegations, the evidence in this case establishes by clear and convincing proof that Respondent acted negligently in her representation of her clients, Mr. Robey, Mr. Boatwright and Ms. Swiger.

C. The amount of real injury was great.

As a result of Respondent's actions, both Mr. Robey and Mr. Boatwright's appeals were delayed. Additionally, as of the date of the hearing, almost two years after the representation commenced, Respondent had not returned Ms. Swiger's retainer fee, despite repeated requests to do so both by Ms. Swiger and her attorney, Ms. Hausman. In addition, Respondent's conduct has brought the legal system and legal profession into disrepute.

D. There are few mitigating factors, but several aggravating factors present.

Mitigating factors in a lawyer disciplinary proceeding “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). In this case, Respondent has demonstrated remorse to the Office of Disciplinary Counsel and the Hearing Panel Subcommittee, which is a mitigating factor.

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. As the Supreme Court has noted, “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 at 557 (*quoting ABA Model Standards for Imposing Lawyer Sanctions*, 9.21 (1992)).

Rule 9.22(c) of the *ABA Model Standards for Imposing Lawyer Sanctions* indicates that a pattern of misconduct constitutes an aggravating factor. Respondent has substantial experience in the practice of law. Moreover, Respondent has exhibited a pattern and practice of misconduct by failing to communicate with her clients and failing to diligently pursue cases on behalf of clients. This pattern and practice is exhibited in the cases charged in this Statement of Charges, and in a prior Statement of Charges filed against Respondent, which resulted in the Supreme Court reprimanding Respondent, among other sanctions, by Order entered October 27, 2010. (ODC Exhibit 28).

IV. 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.

The principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Syl. pt. 3, Daily Gazette v. Committee on Legal Ethics, 174 W. Va. 359, 326 S.E.2d 705 (1984); and Syl. pt. 2, 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).

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.

For the public to have confidence in our disciplinary and legal system, lawyers who engage in the type of conduct 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 the legal profession.

The American Bar Association has recognized that suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect causes [sic] injury or potential injury to a client. Additionally, suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. Finally, suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. *See, ABA Model Standards for Imposing Lawyer Sanctions, §§ 4.42, 6.22 and 8.2.*

In Lawyer Disciplinary Board v. John P. Sullivan, No. 12-0005 (WV 1/17/13) (unreported case), Respondent's license to practice law was suspended for a period of thirty (30) days and supervised practice ordered by the Supreme Court for conduct involving lack of diligence, lack of communication and failure to respond to disciplinary counsel. As was the case in Sullivan, Respondent has also been previously reprimanded for similar conduct, has substantial experience in the practice of law and has exhibited a pattern and practice of misconduct by failing to communicate with her clients and failing to diligently pursue cases on

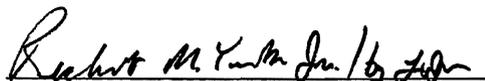
behalf of clients. Lawyer Disciplinary Board v. April D. Conner, No. 35434 (WV 12/27/10) (unreported case).

Accordingly, the Hearing Panel Subcommittee recommends the following to the Supreme Court of Appeals:

1. That Respondent's law license be suspended for a period of thirty (30) days pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure. The Hearing Panel Subcommittee finds that suspension is the appropriate sanction for Respondent's misconduct;
2. If she has not already done so, that Respondent be ordered to reimburse Shawna Swiger her \$2,000 retainer fee;
3. That following Respondent's suspension, Respondent will sign and follow a plan of supervised practice for a period of two (2) years with a supervising attorney of Respondent's choice, said supervision to be approved by the Office of Disciplinary Counsel and be available to respond to inquiries by the Office of Disciplinary Counsel; and
4. 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.

Dated August 29, 2014.

LAWYER DISCIPLINARY BOARD


Richard M. Yurko, Jr., Esquire
Chair

Cynthia Pyles, Layperson

Sean Francisco, Esquire

behalf of clients. Lawyer Disciplinary Board v. April D. Conner, No. 35434 (WV 12/27/10) (unreported case).

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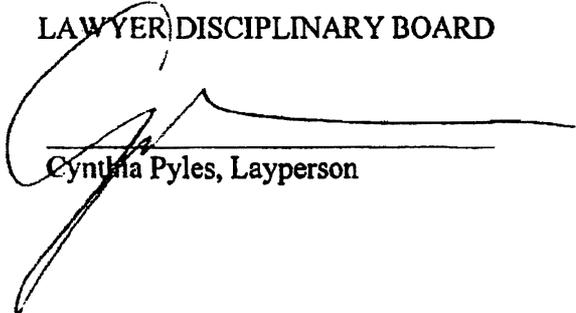
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4. That Respondent be ordered to reimburse the Lawyer Disciplinary Board the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

September
Dated ~~August~~ 2, 2014.


Richard M. Yurko, Jr., Esquire
Chair

Sean Francisco, Esquire

LAWYER DISCIPLINARY BOARD

Cynthia Pyles, Layperson

Richard M. Yurko, Jr., Esquire
Chair

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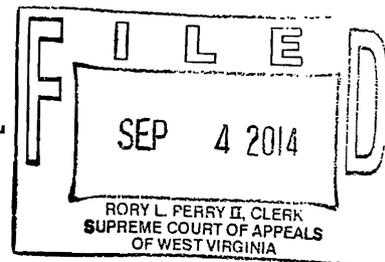
Sean Francisco, Esquire

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Joanne M. Vella Kirby

September 3, 2014

Rory L. Perry, II, Clerk
Supreme Court of Appeals of West Virginia
State Capitol, Room E-317
1900 Kanawha Boulevard East
Charleston, West Virginia 25305

Re: *Lawyer Disciplinary Board v. April D. Conner*
Supreme Court No. 13-0522
I.D. No. 11-03-499, 12-03-513, 12-03-557

Dear Mr. Perry:

The Office of Disciplinary Counsel hereby consents to the recommended sanctions set forth in the "Report and Recommendation of the Hearing Panel Subcommittee" for the above-referenced matter.

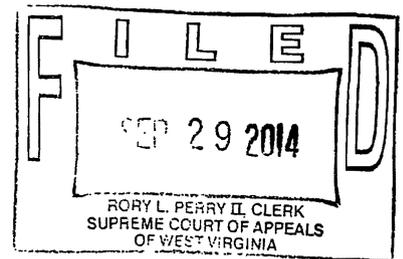
Sincerely yours,

A handwritten signature in cursive script that reads "Joanne M. Vella Kirby".

Joanne M. Vella Kirby
Lawyer Disciplinary Counsel

JVK/au

cc: April D. Conner, Esquire



April D. Conner
P.O. Box 125
West Union, West Virginia 26456

304-873-1737

304-873-1047 Facsimile

September 26, 2014

Rory L. Perry, II, Clerk
Supreme Court of Appeals of West Virginia
State Capitol, Room E-317
1900 Kanawha Boulevard East
Charleston, WV 25305

Re: Lawyer Disciplinary Board v. April D. Conner
Supreme Court No. 13-0522,
I.D. No. 11-030499, 12-03-513, 12-03-557

Dear Mr. Perry:

I, April D. Conner, the respondent in the above-named matter, hereby consent to the recommended sanctions set forth in the "Report and Recommendation of the Hearing Panel Subcommittee."

I would also note for the benefit of the Court, that I reimbursed complainant Shawna Swiger Drummond in advance of the report and recommendations.

With Regards,

A handwritten signature in black ink, appearing to read "April D. Conner".

April D. Conner

Cc: Joanne M. Vella Kirby,
Office of Disciplinary Counsel