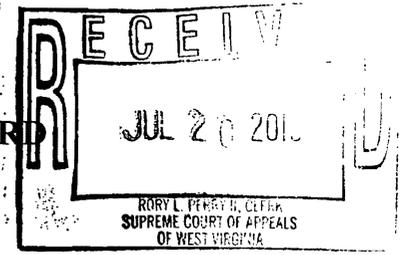


BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA



In Re: HEIDI M. GEORGI STURM, a member of
The West Virginia State Bar

Bar No.: 9371
Supreme Court No.: 15-0009
I.D. No.: 14-05-346

**DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDED SANCTIONS**

I. PROCEDURAL HISTORY

Formal charges were filed against Respondent Heidi M. Georgi Sturm with the Clerk of the Supreme Court of Appeals on or about January 5, 2015, and served upon Respondent via certified mail by the Clerk on January 9, 2015. Disciplinary Counsel filed her mandatory discovery on or about January 27, 2015. Respondent filed her Answer to the Statement of Charges on or about March 2, 2014. Respondent provided her mandatory discovery on or about April 23, 2015. A hearing was set for May 4 and 5, 2015.

Thereafter, this matter proceeded to hearing in Morgantown, West Virginia, on May 4, 2015. The Hearing Panel Subcommittee was comprised of James R. Akers, II, Esquire, Chairperson, Henry W. Morrow, Esquire, and Jon Blair Hunter, Layperson. Jessica H. Donahue Rhodes, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. Respondent appeared *pro se*. The Hearing Panel Subcommittee heard

testimony from Kenneth L. Greynolds and Respondent. ODC Exhibits 1-12, Respondent's Exhibits 1-11, and Joint Exhibits 1 and 2 were admitted into evidence.

Based upon the evidence and the record, the Office of Disciplinary Counsel submits to the Hearing Panel Subcommittee of the Lawyer Disciplinary Board the following Proposed 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. Heidi M. Georgi Sturm (hereinafter "Respondent") is a lawyer practicing in Fairmont, which is located in Marion County, West Virginia. Hrg. Trans. p. 80. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on October 9, 2003. Hrg. Trans. p. 78. 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.

I.D. No. 14-05-346 Complaint of Kenneth L. Greynolds

2. Complainant Kenneth L. Greynolds accepted a plea offer and pled guilty to three (3) felonies on or about December 12, 2012. ODC Ex. 7, bates stamp 55-59. He subsequently decided to appeal the matter, and Respondent was court appointed to represent Mr. Greynolds on his appeal by Order entered on January 15, 2013. ODC Ex. 1, bates stamp 4; ODC Ex. 7, bates stamp 35, 36. Respondent was ordered to contact Mr. Greynolds forthwith. Id.

3. Respondent failed to take any action on Mr. Greynolds' behalf, and he wrote to the judge on two occasions. The first, in or around June of 2013, stated that he had attempted to contact Respondent on several occasions without success. ODC Ex. 7, bates stamp 37-39. The second, in or around June of 2014, asked for new counsel to be appointed.¹ ODC Ex. 7, bates stamp 41-42.
4. By letter dated June 10, 2014, Judge Aloï responded to Mr. Greynolds, stating that the time frame to file an appeal had passed and he would not appoint new counsel to represent Mr. Greynolds. ODC Ex. 1, bates stamp 5; ODC Ex. 7, bates stamp 43.
5. On or about June 25, 2014, Mr. Greynolds filed an ethics complaint alleging that Respondent had violated his "post conviction rights" by (1) failing to file for suspension of the execution of his sentence and thereby preventing his release on probation; (2) failing to file for correction or reduction of his sentence; (3) failing to file a notice of appeal with the Supreme Court of Appeals of West Virginia; and (4) failing to file a petition for writ of error. ODC Ex. 1. He also alleged that Respondent had failed to file a motion to suppress video evidence prior to the trial, and that in January of 2013 she withheld his legal correspondence which would have reduced the amount of time he received. Id.
6. By letter dated June 30, 2014, Disciplinary Counsel wrote to Respondent asking for a response to the complaint. ODC Ex. 2.

¹ Respondent reserved the right to argue the facts in this paragraph in the "Stipulations Regarding Findings of Fact" entered into for this case.

7. Respondent failed to file a response.
8. By letter dated July 29, 2014, sent via certified and regular mail, Disciplinary Counsel again requested a response to the complaint by August 8, 2014. ODC Ex. 3.
9. On August 7, 2014, the Office of Disciplinary Counsel received Respondent's response, which was dated August 1, 2014. ODC Ex. 4.
10. In her response, Respondent stated that Mr. Greynolds had a significant criminal history, and was advised by the prosecutor that the State would file a recidivism action if he did not accept a plea offer. ODC Ex. 4, bates stamp 16-17. Respondent stated that she had filed a motion to suppress the video evidence², which was to be ruled upon when the trial commenced. ODC Ex. 4, bates stamp 17. Respondent stated that she was ready to proceed to trial on December 12, 2012, and that same morning, Mr. Greynolds decided to accept the plea offer. Id. Respondent said that following the plea and sentencing hearing she provided a copy of the order to Mr. Greynolds, but it was returned to sender. ODC Ex. 4, bates stamp 18. She then forwarded the mail to him at Huttonsville Correctional Center. Id. Respondent said she also advised Mr. Greynolds that she would not be able to appeal his conviction because there was no issue relating to the jurisdiction, the sentence, or the voluntariness of entry of the plea. Id.

² A check of the Marion County Circuit Court Clerk's file shows that "Defendant's Motion In Limine" was filed with the Court on or about December 5, 2012. ODC Ex. 7, bates stamp 44.

11. Respondent stated that because she had to certify the appeal by signing a statement that she had “performed a review of the case that is reasonable under the circumstances and I have a good faith belief that an appeal is warranted”, she advised Mr. Greynolds that she could not file an appeal on his behalf. ODC Ex. 8, bates stamp 73.
12. Respondent provided a copy of a letter dated 17 January, 2013, wherein she stated, “I have reviewed the case file and the plea and sentencing order. There are no grounds for you to appeal this order. There is no question as to jurisdiction, the sentence or whether you wished to enter the plea. Therefore, there are no legitimate grounds upon which to appeal.” ODC Ex. 9, bates stamp 78.
13. By letter dated October 15, 2014, Mr. Greynolds stated that he never received a copy of Respondent’s January 17, 2013 letter. ODC Ex. 10, bates stamp 79.
14. Respondent has been admonished on one (1) occasion for a violation of Rule 1.3 of the Rules of Professional Conduct and on one (1) occasion for a violation of Rule 8.4(d) of the Rules of Professional Conduct. ODC Ex. 12, bates stamp 85; 89-90.
15. Because Respondent failed to file an appeal on Mr. Greynolds behalf, after being appointed by the Court to do so, Respondent violated Rule 1.3³ of the Rules of Professional Conduct, which provides as follows:⁴

³ The Supreme Court of Appeals of West Virginia approved comprehensive amendments to the West Virginia Rules of Professional Conduct. The amendments became effective January 1, 2015; however, this document applies to the version of the Rules that was in effect at the time of Respondent’s transgressions. The substance of the new Rules would not result in a different disposition in this case.

⁴ Respondent reserved the right to argue the facts in this paragraph in her stipulations. *See* Joint Exhibit 1.

Rule 1.3. Diligence.

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

16. Because Respondent failed to respond to Mr. Greynolds' requests concerning the status of his appeal, Respondent violated Rule 1.4(a) of the Rules of Professional Conduct, which provides as follows:⁵

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.

17. Because Respondent failed to file Mr. Greynolds' appeal, causing him to lose his right to do so, Respondent violated Rule 8.4(d) of the Rules of Professional Conduct, which provides as follows:⁶

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * *

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

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.

⁵ Respondent reserved the right to argue the facts in this paragraph in her stipulations. *See* Joint Exhibit 1.

⁶ Respondent reserved the right to argue the facts in this paragraph in her stipulations. *See* Joint Exhibit 1.

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 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 violated her duties owed to her clients.

Respondent violated her duties to her client. Respondent was appointed to appeal Mr. Greynolds criminal case on or about January 15, 2013. ODC Ex. 1, bates stamp 4; ODC Ex. 7, bates stamp 35. Mr. Greynolds had to send a letter in June of 2013 to Judge Aloï about not having contact with Respondent. Mr. Greynolds stated that Respondent never filed his appeal. Hrg. Trans. p. 11. Further, Mr. Greynolds testified that he was never advised that his appeal could not be filed because there was not a good basis for the appeal. Hrg. Tran. p. 13.

As for communication, Mr. Greynolds testified that Respondent never responded to Mr. Greynolds' telephone calls and letters. Hrg. Trans. 11-12. That statement is supported by Mr. Greynolds' letters to Judge Aloï. ODC Ex. 7, bates stamp 37-39; ODC Ex. 7, bates stamp 41-42. It is apparent that Respondent did not have reasonable communication with Mr. Greynolds, even though she had a duty to diligently handle Mr. Greynolds' case and to communicate with Mr. Greynolds.

In addition, even if Mr. Greynolds did receive the January 17, 2013 letter from Respondent, Complainant had a duty to file an appeal for an incarcerated individual. The Supreme Court of Appeals of West Virginia recently noted in 2012

“that since the Rules of Appellate Procedure have been modified to more clearly provide a right of appeal in all cases, the frequency of such creative methods to obtain review has increased. Although the appellate procedures have undergone change to insure that the disposition of each perfected appeal is reflected in a written decision, nothing has changed as to the professional responsibility of lawyers to proceed only on meritorious issues. The change in the appellate rules was in no way intended to impose a greater or lesser burden on the legal community. Pursuant to principles contained in Rule 3.1 of the West Virginia Rules of Professional Conduct, [footnote 6] an appellate remedy should not be pursued unless counsel believes in good faith that error has been committed and there is a *reasonable basis* for the extension, modification, or reversal of existing law. [footnote 7].”

State v. McGill, 230 W.Va. 85, 736 S.E.2d 85 (2012). The footnotes explain that in certain instances appointed counsel will have to file a brief pursuant to the principles in Anders v. California and Rhodes v. Leverette. Respondent was appointed counsel and had a duty to file a brief pursuant to Anders and Rhodes, even if she did not believe that there were meritorious arguments. Respondent testified that she “never even heard about an Anders brief.” Hrg. Trans. p. 92. Further, she “thought, obviously erroneously, that [her] sending Mr. Greynolds

a letter saying that based on [her] review of [his] file, there's nothing to appeal with satisfactory." Id. Respondent now admits that the January 17, 2013 letter was not sufficient. Further, Respondent testified that she "should've sent a letter to the court and asked to withdraw [from Mr. Greynolds' case] because [she] found no reason to appeal." Hrg. Trans. p. 93. Mr. Greynolds testified that he can no longer file an appeal in his case. Hrg. Trans. p. 13.

B. Respondent acted negligently.

The evidence establishes that Respondent acted negligently in these matters. The ABA Standards for Imposing Lawyer Sanctions define negligence as the failure of a lawyer to heed 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 that situation.

C. The amount of real injury is great.

Respondent failed to file an appeal for Mr. Greynolds which limited his ability to challenge anything in his case resulting in injury to him. Respondent is no longer able to file an appeal in his case. Respondent's failure to communicate with Mr. Greynolds led to a period where he was not aware what was going on in his case and caused him to miss his appeal deadline. Respondent's misconduct has brought the legal system and legal profession into disrepute.

D. There are 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). Respondent admitted in her stipulations in this case that she has experience in the practice of law and prior disciplinary action by the Investigative Panel of the Lawyer Disciplinary Board. *See* Joint Exhibit 1.

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: a cooperative attitude toward proceedings and remorse. *See* Joint Exhibit 1.

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, 186 W.VA. 43, 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).

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. Syl.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, 186 W.Va. 43, 45, 410 S.E.2d 279, 281 (1991). Respondent, a lawyer with considerable experience, has demonstrated conduct which has fallen below the minimum standard for attorneys, and discipline must be imposed.

The American Bar Association has recognized that a reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to a client, the public, or the legal profession and causes injury or potential injury to a client, the public or the legal system. *See*, ABA Model Standards for Imposing Lawyer Sanctions, § 4.13.

A public reprimand was issued and supervised practice was ordered by the Supreme Court of Appeals for conduct involving lack of diligence and lack of communication along with failure to respond to disciplinary counsel in Lawyer Disciplinary Board v. Geraldine Roberts, 217 W.Va. 189, 617 S.E.2d 539 (2005). *See also*, Lawyer Disciplinary Board v. Brentton W. Wolfingbarger, No. 29973 (WV 3/13/02): lawyer reprimanded for violations of Rules 1.4 and 8.1 and ordered to undergo supervised practice for eighteen (18) months (unreported case); Lawyer Disciplinary Board v. Lee F. Benford, No. 31795 (WV 1/19/05): lawyer reprimanded for violations of Rules 1.3, 1.4(a), and 8.1(b) and ordered to undergo supervised practice for two (2) years (unreported case); Lawyer Disciplinary Board v. Reggie R. Bailey, No. 31799 (WV 3/9/05): lawyer reprimanded for violations of Rules 1.3, 1.4 and 8.1 and ordered to undergo one (1) year of supervised practice (unreported case); Lawyer

Disciplinary Board v. Richard L. Vital, No. 32229 (WV 5/25/05): lawyer reprimanded for violations of Rules 1.3, 1.4, and 8.1(b) and ordered to undergo supervised practice for two (2) years (unreported case); Lawyer Disciplinary Board v. David S. Hart, No. 33328 (WV 9/14/07): lawyer reprimanded for violations of Rules 1.3, 1.4, and 8.1(b) (unreported case); Lawyer Disciplinary Board v. April D. Conner, No. 35434 (WV 10/27/10): lawyer reprimanded for violations of Rules 1.3, 1.4, 8.1(b), 1.15(b), and Rules 1.16(b) and ordered to undergo supervised practice for one (1) year (unreported case); Lawyer Disciplinary Board v. Daniel R. Grindo, 231 W.Va. 365, 745 S.E.2d 256 (2013): lawyer reprimanded for violations of Rules 1.3, 3.2, and 3.4(c); Lawyer Disciplinary Board v. Donna M. Price, No. 11-1345 (WV 3/25/14): lawyer reprimanded for violations of Rules 1.1 and 1.3 (unreported case); Lawyer Disciplinary Board v. Donna M. Price, No. 13-0478 (WV 5/27/14): lawyer reprimanded for violations of Rule 8.1(b) (unreported); and Lawyer Disciplinary Board v. Jeffrey S. Rodgers, No. 13-0721 (WV 10/15/14): lawyer reprimanded for violations of Rules 1.3, 1.4(a), 1.4(b), 1.15(a), 1.15(b), 8.4(c), and 8.4(d).

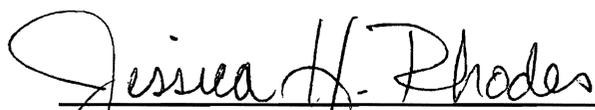
For the reasons set forth above, the Office of Disciplinary Counsel recommends the following sanctions:

- A. That Respondent shall be reprimanded;
- B. That Respondent's practice shall be supervised for a period of two (2) years by an attorney agreed upon between the Office of Disciplinary Counsel and Respondent, which shall run concurrent to the supervised practice under Case No. 14-0749. Respondent shall meet with her supervising attorney every two (2) weeks. 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 behavior is not likely to recur;

- C. That, pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, Respondent shall pay costs of this disciplinary proceeding.

Respectfully submitted,
The Office of Disciplinary Counsel
By counsel



Jessica H. Donahue Rhodes [Bar No. 9453]

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CERTIFICATE OF SERVICE

This is to certify that I, Jessica H. Donahue Rhodes, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 17th day of July, 2015, served a true copy of the foregoing "**DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED SANCTIONS**" upon Respondent Heidi M. Georgi Sturm by mailing the same via United States Mail with sufficient postage, to the following address:

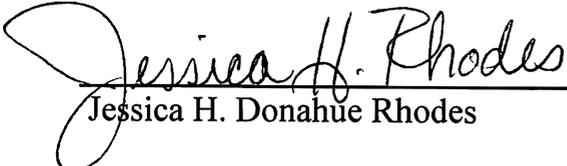
Heidi M. Georgi Sturm, Esquire
301 Adams Street, Suite 803
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And upon the Hearing Panel Subcommittee at the following addresses:

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