

BEFORE THE HEARING PANEL SUBCOMMITTEE:  
LAWYER DISCIPLINARY BOARD  
STATE OF WEST VIRGINIA

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

BAR ID: 9371  
Supreme Court No.: 14-0749  
15-0009  
ID No.: 12-05-267  
12-05-268(I)  
14-05-346 (II)

**PROPOSED FINDINGS OF FACT and CONCLUSIONS OF LAW**

On the 4<sup>th</sup> day of May, 2015, came the Petitioner, Jessica Rhodes, counsel for the Office of Disciplinary Counsel, and came the Respondent, Heidi M. Georgi Sturm, *pro se*, all for a disciplinary hearing in the above-styled matters before the Hearing Panel Subcommittee, including J.B. Akers, Chair, Jon Hunter, and Henry Morrow.

The Respondent, Heidi M. Georgi Sturm, stipulated to the allegations contained in I.D. Nos. 12-05-267 and 12-05-268, but for the question as to whether the Respondent is entitled to the initial retainer fee paid by Laverne Wright-Ochoa on behalf of her son, Lael Brown. In I.D. No. 14-05-346, the Respondent denies all allegations contained in Paragraphs 3, 14, 15, and 16.

Based upon the information elicited through the testimony and written submissions, the Hearing Panel makes the following Findings of Facts in I.D. Nos.: 12-05-267 and 12-05-268:

1. That the Respondent did research, draft, and prepare a complete Habeas Corpus petition for Lael Brown;
2. That although the Respondent did not provide a summarized billing statement, a statement of the time allotted for each activity the Respondent accomplished was totaled and provided to the ODC per their request;

3. That the time the Respondent spent researching, drafting, should be compensated for her time in consultation with Ms. Wright-Ochoa, her ex-husband, and her current husband, the research, and the drafting of the Habeas petition;
4. That the Respondent provided her work product to Ms. Wright-Ochoa, who did not approve of the Respondent's work and continued to provide additional research and documentation for the Respondent's review;
5. That Ms. Wright-Ochoa admitted the Respondent did, in fact, do "a petition" (TT pg. 72, line 10) as well as admit that the Respondent met with she, her current husband, and her ex-husband, as well as communicate with her via telephone and email. Further, Ms. Wright-Ochoa admitted that she provided voluminous documents to the Respondent, which have been provided to the hearing panel, and that the Respondent provided her drafts of Habeas petitions;
6. That the Respondent has in fact modified her billing practices so that all time is kept contemporaneously and billed to the client on a 45-60 day schedule (TT pp. 87-88, line 3-24);
7. That the Respondent acknowledged that although she did do the research and draft a Habeas petition which was not filed, it was not the Respondent's best work and did in fact reflect negatively on the Respondent's obligation to Mrs. Wright-Ochoa (TT pg. 89, lines 3-12);
8. That the Respondent modified her practice in such a way as to make which party she is representing very clear (TT pg. 84, lines 15-22);
9. That the issues raised by Mrs. Wright-Ochoa have been considered by the

Respondent and the Respondent has made changes in her practice to better reflect the standards and expectations of her profession as evidenced by the contemporaneous time records and billing statements presented by the Respondent at the hearing;

Based upon the information elicited through the testimony and written submissions, the Hearing Panel makes the following Conclusions of Law in I.D. Nos.: 12-05-267 and 12-05-268:

10. That in accordance with Rule 1.5 of the Rules of Professional Conduct, the Respondent has the right to be compensated for the work provided, as long as the fee is not unreasonable and said information regarding representation has been provided to the client. In this case, the Respondent provided Ms. Wright-Ochoa a written contract regarding her fee for services and research, drafted and communicated with Ms. Wright-Ochoa;
11. That in accordance with the American Bar Association's "Standards for Imposing Lawyer Sanctions," which addresses what mitigating factors should be considered include, but are not limited to the following: absence of a dishonest or selfish motive; personal or emotional problems; full and free disclosure to disciplinary board or cooperative attitude toward proceedings; character or reputation; remorse, and remoteness of prior offenses.
  - A. In the present case, the Respondent was not dishonest nor did she act with a selfish intent;
  - B. The Respondent was going through a very difficult personal matter involving her ex-husband's arrest, drug usage, his contact with the

- children, the issuance of a DVPO, and modification of the custody arrangement which profoundly impacted the Respondent's legal practice;
- C. The Respondent cooperated fully with the Disciplinary Board and the proceedings in this matter as evidenced by the written stipulations and her testimony at the hearing;
  - D. The Respondent's character and reputation are positive and she is considered to be a competent attorney based upon her repeated appointments in both circuit and family courts;
  - E. The Respondent has not been previously formally disciplined but has acknowledged that she has received admonishments;
12. That although a completed Habeas petition was not filed, the Respondent did do the work to complete the Habeas petition as evidenced by the records provided to the ODC, Mrs. Wright-Ochoa, and the Respondent;
13. That the Respondent has considered the complaint of Mrs. Wright-Ochoa and the concerns of the ODC to make necessary and appropriate changes to her billing practices to insure there are no further issues in this regard;
14. That the Respondent has also determined that she no longer would accept retained or appointed Habeas work in her legal practice (TT pp. 104-105, lines 24 and 1-14).

The Respondent, Heidi M. Georgi Sturm, stipulated to the allegations contained in I.D. No. 14-05-346, but for the rule violations alleged in the Statement of Charges. In I.D. No. 14-05-346, the Respondent denies all allegations contained in Paragraphs 3, 14, 15, and 16.

Based upon the information elicited through the testimony and written submissions, the Hearing Panel makes the following Findings of Facts in I.D. No.: 14-05-346:

2. That the Respondent has represented Mr. Greynolds on a variety of misdemeanor and felony matters over a course of several years;
3. That the Respondent, based upon her conversations and correspondence with Mr. Greynolds, was fully prepared to begin jury selection and trial on the morning of December 12<sup>th</sup>, 2012 (TT pp. 13 - 14, lines 20-24 and 1-20);
4. That the Respondent urged Mr. Greynolds to take this matter to trial but he felt that entering into a plea, based upon the likelihood that State would be able to prove his recidivist status, entered into a plea (TT pg. 14, lines 9-11);
5. That Mr. Greynolds stated he did not receive a letter from the Respondent, based upon her review of the entire file, the plea and plea agreement, that there were not any grounds upon which to appeal his case (TT pg. 15, line 6-11);
6. That the Respondent, in preparing the Notice of Intent to Appeal and the Perfected Appeal, would have to verify that there were sufficient grounds for an appeal and that an appeal of the matter was warranted, which the Respondent did not believe based upon her research and experience;
7. That upon Mr. Greynolds's request to appeal his case prior to the entry of his plea, the Respondent urged him to take this matter to the jury for their consideration (TT pg. 109, lines 1-4);
8. That based upon the Respondent's experience, as demonstrated by documentation for William Chester, there was a significant likelihood that the State would ask

that Mr. Greynolds's plea be withdrawn and set for trial had he appealed this matter, as it would have been considered a violation of the plea agreement (TT pp 107, lines 8-24 and 1-3);

9. That the Circuit Court of Marion County, Division I, determined that Mr. Greynolds entered into his plea voluntarily and it was disinclined to change the terms of the readily agreed upon plea (TT pg. 107, lines 1-7);
10. That especially since Mr. Greynolds had been provided the West Virginia Code section related to recidivism, there was a significant likelihood the State would file as such in regard to Mr. Greynolds and he was well aware of this fact (TT pg. 14, lines 12-19);
11. That the Respondent did not file an Anders Brief in this matter although that was an available option;
12. That the Respondent had no knowledge of an Anders Brief until the filing of Mr Greynolds complaint and the ODC telephonic conference. However, following the telephonic conference the Respondent researched Anders Briefs for future reference should this issue arise in another matter (TT pg. 92, lines 2-16);
13. That the Respondent had never had the opportunity to learn about Anders Briefs through formal legal education or through continuing legal education; however, the Respondent took it upon herself to learn about Anders Briefs through research and contact with federal attorneys (Id.);
14. That the Respondent will now file Anders Briefs in cases where a client requests an appeal but the Respondent does not believe it is warranted;

15. That, in the future, the Respondent will also, after filing the Anders Brief, move the Court to withdraw as counsel of record in said matter(s);

Based upon the information elicited through the testimony and written submissions, the Hearing Panel makes the following Conclusions of Law in I.D. No.: 14-05-346

16. That in accordance with the American Bar Association's "Standards for Imposing Lawyer Sanctions," which addresses what mitigating factors should be considered include, but are not limited to the following: absence of a dishonest or selfish motive; personal or emotional problems; full and free disclosure to disciplinary board or cooperative attitude toward proceedings; character or reputation; remorse, and remoteness of prior offenses.
  - A. In the present case, the Respondent was not dishonest nor did she act with a selfish intent;
  - B. The Respondent was going through a very difficult personal matter involving her ex-husband's arrest, drug usage, his contact with the children, the issuance of a DVPO, and modification of the custody arrangement which profoundly impacted the Respondent's legal practice;
  - C. The Respondent cooperated fully with the Disciplinary Board and the proceedings in this matter as evidenced by the written stipulations and her testimony at the hearing;
  - D. The Respondent's character and reputation are positive and she is considered to be a competent attorney based upon her repeated appointments in both circuit and family courts;

- E. The Respondent has not been previously formally disciplined but has acknowledged that she has received admonishments;
16. That the Respondent did not intentionally act in such a way as to harm Mr. Greynolds although his time to file an appeal has passed; however, he is still able to file a Habeas petition requesting relief;
  17. That upon Mr. Greynolds acceptance of the plea and plea offer, as evidenced by the transcript of said proceeding, Mr. Greynolds had no complaints regarding the Respondent's representation;
  18. That although the Respondent had intended to proceed to trial on the morning on December 12<sup>th</sup>, 2012, the Respondent was able to negotiate an *Alford* plea which provided Mr. Greynolds further opportunity to acknowledge wrong-doing without allocuting to the underlying facts in his cases;
  19. That the Court informed Mr. Greynolds that a plea agreement is a contract and one side cannot withdraw and change the terms of said agreement as confirmed by the transcript of Mr. Greynolds's plea hearing.

That the following mitigating factors should be considered in I.D. Nos. 12-05-267, 12-05-268, and 14-05-346, as testified to by the Respondent:

1. That on the 14<sup>th</sup> of April, 2010, the Respondent's ex-husband appeared at the parties' younger daughter's fifth birthday party and obviously intoxicated. Upon leaving the party, the Respondent's ex-husband and his girlfriend were arrested and incarcerated at the North Central Regional Jail. Both of the parties' children were present and witnessed their father's behaviors as did several people with

- whom the Respondent worked (TT pg. 97, lines 20-24);
2. That a Domestic Violence Protective Order was granted on behalf of the Respondent's children on this date (TT pg. 98, lines 9-10);
  3. That at the Domestic Violence Protective Order hearing the Respondent agreed to the dismissal of the Protective Order if the Respondent's ex-husband would only be permitted at the home of the Respondent's ex-husband's mother's home, for approximately six (6) hours, every other Sunday. Additionally, the Respondent's ex-husband would not be permitted to drive the children anywhere (Id. at lines 13-18);
  4. That the Respondent's ex-husband continued to call and leave bizarre messages that the children heard during this time period (Id. at lines 22-23);
  5. That it became apparent that the Respondent's ex-husband's substance abuse was a prominent issue affecting the children;
  6. That between April 2010 and June 2013, the Respondent's ex-husband was involved in an explosion and a possibility that he was using bath salts so the children were no longer permitted to have unsupervised contact with him (TT pp. 100-101, lines 15-24 and 1-18);
  7. That during this time period, the Respondent's primary focus was her children, keeping them safe, addressing the issues arising from her ex-husband's behavior, and trying to do what was in the children's best interest;
  8. That since the filing of the charges, the Respondent has made significant changes to her practice, specifically keeping contemporaneous time records at her desk,

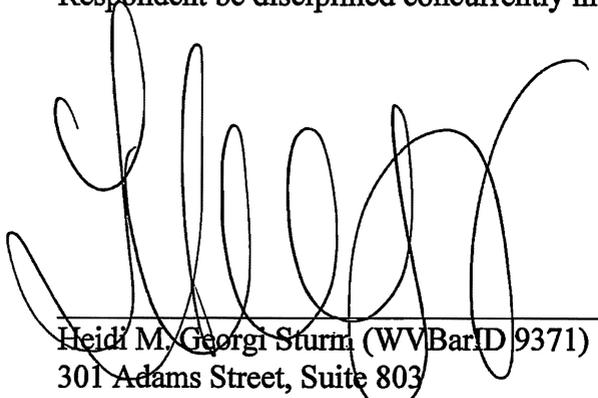
having Hearing/MDT/Client Contact/GAL Contact/Juvenile/Juvenile Detention/  
Mental Hygiene sheets to keep time at each of these client-related activities, and  
using Time59 for retained client billing (TT pg. 102-103, lines 3-24 and 1-16);

9. That the Respondent has modified her contractual agreement to better reflect the Rules of Professional Responsibility and her obligations regarding client funds (TT pp. 103-104, lines 17-24 and lines 1-2);
10. That the Respondent has researched Anders Briefs and could use this tool to more effectively manage cases where she does not believe an appeal is appropriate (TT 104, lines 3-8);
11. That the Respondent has also begun providing a very specific letter to all felony clients who are entering a plea regarding the Court's discretion as to sentencing, rules associated with probation, Notice of Post-Conviction Rights, and how their appeal rights are limited by the entry of a plea (Id. at lines 13-21). Additionally, the Respondent provides copies of the Notice and Rules to her clients with said letter;
12. That the Respondent stipulated to all facts but for the return of the retainer fee in I.D. Nos. 12-05-267 and 12-05-268 and has agreed to the sanctions recommended by the ODC if Complaint I.D. No. 14-05-346 is not dismissed.

WHEREFORE, the Respondent asks that this Hearing Panel conclude that the Respondent is not required to return the \$5000.00 retainer to Mrs. Wright-Ochoa as the Respondent did the work necessary to research, draft and prepare a Habeas petition on behalf of Lael Brown.

The Respondent asks that all charges associated with I.D, No. 14-05-346 be dismissed as the Respondent communicated with Mr. Greynolds so as to be fully prepared to begin trial on the morning of December 12<sup>th</sup>, 2012, at which time he decided to enter into an *Alford* plea agreement negotiated by the Respondent at that time with the State. Additionally, upon being appointed to Mr. Greynolds's appeal, the Respondent reviewed the file, with which she was very familiar, and determined that an appeal was not warranted based upon the facts. The Respondent immediately corresponded with Mr. Greynolds and informed him of that fact. Although Mr. Greynolds claims he did not receive said correspondence, the Circuit Court of Marion County, Division I, denied his *pro se* Motion for Reconsideration based upon the terms of the plea agreement that Mr. Greynolds readily agreed to.

That based upon the Respondent's stipulations in I.D. Nos. 12-05-267 and 12-05-268, the Respondent asks that she be disciplined in accordance to the recommendations of the Office of Disciplinary Counsel. And, should the Hearing Panel not dismiss I.D. No. 14-05-346, that the Respondent be disciplined concurrently in accordance with the ODC's recommendations.



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Respectfully Submitted,  
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Respondent,  
*Pro Se,*