

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



Re: Daniel R. Grindo, a member of
The West Virginia State Bar

Bar No.: 9131
Supreme Court No.: 18-0869
I.D. No.: 17-03-308

REPORT OF THE HEARING PANEL SUBCOMMITTEE

I. PROCEDURAL HISTORY

Formal charges were filed against Daniel R. Grindo (hereinafter “Respondent”) with the Clerk of the Supreme Court of Appeals on or about October 9, 2018, and served upon Respondent via certified mail by the Clerk on October 17, 2018. Disciplinary Counsel filed her mandatory discovery on or about November 7, 2018. Respondent filed his Answer to the Statement of Charges on or about December 6, 2018. Respondent failed to provide his mandatory discovery, which was due on or before December 7, 2018. Disciplinary Counsel then filed a Motion to Exclude Testimony of Witnesses And/or Documentary Evidence or Testimony of Mitigating Factors on December 28, 2018. The Hearing Panel Subcommittee granted this motion at the telephonic pre-hearing held on January 14, 2019. Based upon the sudden unavailability of its only witness, on

January 28, 2019, Chief Lawyer Disciplinary Counsel filed a Motion to Continue Hearing, which was granted by the Hearing Panel Subcommittee.

Thereafter, this matter proceeded to hearing at the Office of Lawyer Disciplinary Counsel, Charleston, West Virginia, on February 25, 2019. The Hearing Panel Subcommittee was comprised of Timothy E. Haught, Esquire, Chairperson, Stephen M. Mathias, Esquire (participating by telephone), and Rachel Scudiere Vitt, Layperson. Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, appeared on behalf of the Office of Lawyer Disciplinary Counsel. Respondent appeared *pro se*. The Hearing Panel Subcommittee heard testimony from Dana F. Eddy and Respondent. In addition, ODC Exhibits 1-12 and were admitted into evidence.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Daniel R. Grindo (hereinafter “Respondent”) is a lawyer practicing in Gassaway, which is located in Braxton County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on September 24, 2002. 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.

COUNT I
I.D. No. 17-03-308
Complaint of the Office of Disciplinary Counsel

2. This complaint was opened after a review of Respondent’s billing vouchers submitted to the Public Defender Services Corporation (hereinafter referred to as PDS) for work performed on multiple dates. Respondent subsequently entered into a Conciliation Agreement with PDS on June 4, 2015, which stated the following:

WHEREAS, PDS’ audit of the vouchers submitted by [Respondent] found that, since January 1, 2013, [Respondent] has exceeded thirty (30) hours of billing on five (5) dates; twenty-four (24) hours of billing on sixteen (16) dates; twenty (20) hours of billing on forty-seven (47) dates; and fifteen (15) hours of billing on ninety-six (96) dates;

WHEREAS, PDS’ audit did not include the time that was billed by Daniel

K. Armstrong for these same dates.¹

WHEREAS, [Respondent] disclosed that the business model for the law firm consisted of the utilization of non-attorneys to deliver legal services to clients under the supervision and direction of attorneys and that the time devoted by the non-attorneys to the performance of legal tasks was billed at the rates of compensation for “attorney work” under the Governing Act because [Respondent] claims that, otherwise, his office loses money when using staff to perform such services at the rates permitted for paralegal services under the provisions of the Governing Act;

3. The agreement further states that Respondent was cooperative and agreed to various provisions set forth in the agreement. Respondent agreed to make restitution in the amount of \$1,927.86 for payments made to PDS for mileage reimbursements that have been determined to be duplicative and payments made

¹ Mr. Armstrong was an associate in Respondent’s law office.

for postage charges which, upon review, were overstated. Respondent further agreed to the reduction of vouchers that were presently held by PDS for payment by one-third of the total amount. The total amount of the reduction amounted to \$40,425.90, and represented reflected legal services provided by non-attorneys, but billed at an attorney rate. [Exhibit 1 Bates no. 000000-000002]

4. Respondent filed a timely response to the underlying ethics complaint and admitted that he had made mistakes in his billing, but noted that he had been cooperative with PDS in addressing the issues and correcting them. Respondent stated he had been using a timekeeping system that he had learned from other attorneys who had been practicing for many years. Respondent further noted that the Executive Director of PDS, Mr. Eddy, had advised Respondent that he did not believe Respondent was attempting to defraud PDS. Respondent said he had paid the ordered restitution and had changed his timekeeping practice. With regard to the provision requiring Respondent to consult counsel on the issue of self-reporting, Respondent stated that while he did not seek a formal opinion from counsel, he did speak informally to “several attorneys throughout the process.” Respondent stated that after those discussions, and his communications with PDS, he was of the belief that the matter was “being treated as a procedural correction.” [Exhibit 3 Bates no. 000012-000015]

5. Mr. Eddy testified that in 2015 PDS was able to generate “meaningful reports” to track attorney billing. He testified that Respondent was one of the attorneys who

came up in the reports for billing in excess of 24 hours in one day. [Transcript at 73] Mr. Eddy contacted Respondent about concerns regarding his billing submissions by letter dated February 18, 2015. [ODC Exhibit 12 Bates 408-413]

6. Mr. Eddy testified that when Respondent was confronted about the billing issues he represented to Mr. Eddy that the Circuit Courts were familiar with and were okay with his business model. Eddy testified that he did not believe these assertions, but made certain to include the same in the Conciliation Agreement. [Transcript at 89-90]

7. Respondent acknowledged that “he [didn’t] recall having a specific conversation with any judge” about his “business model”. [Transcript at 21] And, in fact, claimed that despite executing the conciliation agreement that states that the Circuit Courts were aware and understood his billing submissions that he now did not “recall making any assertion that [he] had previously cleared that issue with a judge” [Transcript at 21]

8. Mr. Eddy testified that despite Respondent’s agreement to repay the \$1,927.86 in overpayment of expenses on or before July 4, 2015, that it was not paid until May 8, 2017. [Transcript at 93-99 and Exhibit 12 at 420-427]

9. Mr. Eddy testified at the disciplinary hearing that attorneys can bill for non-attorney staff time pursuant to West Virginia Code § 29-21-13(a). [Transcript at 67-68] Mr. Eddy testified that he was “put off” by Respondent’s “business model” characterization of his billing practices because “it was the first time [he] ever

heard any court appointed counsel talk in terms of generating profit from this type of work...” [Transcript at 87]

10. Respondent further agreed to seek independent counsel regarding his possible obligation to self-report this matter to the Office of Disciplinary Counsel.

Respondent agreed to report the matter to ODC if counsel advised to do so. If counsel advised him that a self report was not necessary, he was to indicate the same to PDS. The conciliation agreement stated should Respondent not obtain an opinion, PDS would “independently determine whether the matter should be reported to the Office of Disciplinary Counsel.” [Exhibit 1 Bates no. 000003]

11. By letter dated December 27, 2017, ODC inquired of Mr. Eddy who stated that according to his records and notes, Respondent advised Mr. Eddy on August 10, 2015, that he would self-report his conduct to the Office of Disciplinary Counsel. Mr. Eddy stated he subsequently contacted Respondent to confirm his self-report and Respondent confirmed that he had conversations with the ODC. [Exhibit 5 Bates no. 000018-000019]

12. Respondent was provided a copy of Mr. Eddy’s December 27, 2017 letter and was asked to provide an additional response regarding his representation to ODC.

Respondent stated that he did not dispute Mr. Eddy’s recitation of the events, and that it appeared he neglected to make the self-report. [Exhibit 7 Bates no. 000021]

13. There is no record that Respondent ever reported this matter to ODC or that he sought informal advice regarding the same.

14. Mr. Eddy testified that Respondent represented to him both in writing and in several conversations that Respondent did in fact self report to ODC, but Eddy was now presently aware that despite these representations he did not do so.
[Transcript at 112]
15. Mr. Eddy testified that he believed “without a doubt” that Respondent committed violations of West Virginia Code § 29-21-13(a). However, his testimony as to whether these violations were committed fraudulently and deceitfully, is less clear. At one point he testified that they were committed intentionally and knowingly. [Transcript at 101-103] However, at another point, he indicated that they were more out of ignorance as to the requirements of the billing statute at question. He noted that this was not an excuse but that he did believe it to be a slight mitigating factor on the issue of knowingly making a false statement. [Transcript at 136-139] He testified that he had no evidence that the Respondent in fact knew that he was improperly billing but that he should have known. [Transcript at 137] Even Ms. Cipoletti agreed with that characterization. [Transcript at 138] He further testified, however, that it was his opinion that Respondent violated Rules 1.5, 3.3, and 8.4(d) of the Rules of Professional Conduct. [Transcript at 140-142]
16. Because Respondent submitted vouchers wherein he claimed he billed thirty (30) hours of billing on five (5) dates; twenty-four (24) hours of billing on sixteen (16) dates; twenty (20) hours of billing on forty-seven (47) dates; and fifteen (15) hours of billing on ninety-six (96) dates in various cases wherein he was court appointed

to represent indigent clients, he has violated Rule 1.5(a)² of the Rules of Professional Conduct, which provides as follows:

Rule 1.5. Fees.

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services, and
- (8) whether the fee is fixed or contingent.

17. Because Respondent should have known how to properly submit billing vouchers under the statute and submitted inaccurate and improper billing vouchers representing time for paralegals as attorney time to the Circuit Court for approval, Respondent violated Rule 3.3(a)(1)³ of the Rules of Professional Conduct, which provides as follows:

² Because Respondent's misconduct occurred prior to January 1 2015, the Rules in effect prior to that date are applicable here.

³ Because Respondent's misconduct occurred prior to January 1 2015, the Rules in effect prior to that date are applicable here.

Rule 3.3. Candor toward the tribunal.

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal.

18. Because Respondent engaged in a pattern and practice of submitting vouchers and claims for fees wherein he knowingly billed paralegal services at an attorney rate and therefore failed to accurately comply with W.Va. Code §29-21-13a(g), he has violated Rule 8.4(d)⁴ of the Rules of Professional Conduct, which provides:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

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

19. Respondent has not been charged or convicted of any criminal acts. It is not the purpose of this Hearing Panel to determine whether criminal acts were committed or to prosecute the same and absent a finding of guilt or a plea of guilt to a criminal offense we must afford the Respondent the presumption of innocence guaranteed under our Constitution. Absent evidence of a criminal conviction this Hearing Panel cannot find that the Respondent engaged in fraudulent schemes in violation of W.Va. Code § 61-3-24d⁵ and, therefore, violated Rule 8.4(b)⁶ of the Rules of Professional Conduct, which provides as follows:

⁴ Because Respondent's misconduct occurred prior to January 1 2015, the Rules in effect prior to that date are applicable here.

⁵ West Virginia Code §61-3-24d states "(a) Any person who willfully deprives another of any money, goods, property or services by means of fraudulent pretenses, representations or promises shall be guilty of the larceny thereof. (b) In determining the value of the money, goods, property or services referred to in subsection (a) of this section, it shall be permissible to cumulate amounts or values where

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

20. In an effort to avoid inquiry into his over-billing to PDS that would subject him to disciplinary action, Respondent knowingly deceived and intentionally made false statements to PDS regarding his statements regarding his self report to ODC. Additionally, Respondent's initial representation to ODC regarding the self-report clause of the agreement was misleading, and as such has violated Rules 8.1(a)⁷ and 8.4(c)⁸ of the Rules of Professional Conduct, which provides as follows:

Rule 8.1. Bar admission and disciplinary matters.

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

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

Rule 8.1 Bar Admission and Disciplinary Matters.

[Effective January 1, 2015]

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

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

such money, goods, property or services were fraudulently obtained as part of a common scheme or plan."

⁶ Because Respondent's misconduct occurred prior to January 1 2015, the Rules in effect prior to that date are applicable here.

⁷ Because Respondent's misconduct occurred prior to January 1, 2015, as well as after that date, both version of the Rules apply.

⁸ Because Respondent's misconduct occurred prior to January 1, 2015, as well as after that date, both version of the Rules apply.

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Rule 8.4. Misconduct.

[Effective January 1, 2015]

It is professional misconduct for a lawyer to:

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

III. DISCUSSION

The Supreme Court of Appeals of West Virginia has long recognized that attorney disciplinary proceedings are not designed solely to punish the attorney, but also to protect the public, to reassure the public as to the reliability and integrity of attorneys, and to safeguard its interests in the administration of justice. Lawyer Disciplinary Board v. Taylor, 192 W.Va. 139, 451 S.E.2d 440 (1994). Factors to be considered in imposing appropriate sanctions are found in Rule 3.16 of the Rules of Lawyer Disciplinary Procedure. These factors consist of: (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors. *See also*, Syl. Pt. 4, Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d 722 (1998).

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

In determining the nature of the ethical duty violated, the standards assume that the most important ethical duties are those obligations which a lawyer owes to clients. In addition to duties owed to clients, the lawyer also owes duties to the general public. Members of the public are entitled to expect lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty or interference with the administration of justice. Lawyers also owe duties to the legal system. Lawyers are officers of the court, and must abide by the rules of substance and procedure which shape the administration of justice. Lawyers must always operate within the bounds of the law, and cannot engage in any other illegal or improper conduct. Finally, lawyers owe duties to the legal profession. Unlike the obligations mentioned above, these duties are not inherent in the relationship between the lawyer and the community. These duties do not concern the lawyer's basic responsibilities in representing clients, serving as an officer of the court, or maintaining the public trust, but include other duties relating to the profession. The evidence in this case establishes by clear and convincing proof that Respondent violated his duties owed to his clients, the general public, the legal system, and the legal profession.

B. Respondent acted intentionally and knowingly.

There is no question that Respondent acted intentionally and knowingly as it relates to the submission of vouchers both to the Court and PDS as he knowingly and intentionally submitted the vouchers for paralegal time as lawyer time. However, there is insufficient evidence to establish that he acted deceitfully or fraudulently. Moreover, there is no evidence that the work billed for was not performed. In fact, the record

indicated that it was done but improperly billed. It is clear, however, that he should have known how to properly bill according to the statute and his ignorance is not an excuse for overbilling, but rather a mitigating factor on the issue of conduct involving fraud and deceit. It is clear, however that the statements that relate to his duty to self report made to Dana Eddy, and later to ODC were intentional, knowing, fraudulent and deceitful. They were intended to mislead both Dana Eddy and the ODC.

C. The amount of real injury is great.

Injury is harm to a client, the public, the legal system, or the legal profession which results from a lawyer's misconduct. The level of injury can range from "serious" injury to "little or no" injury. A reference to "injury" alone indicates any level of injury greater than "little or no" injury. "Potential injury" is the harm to a client, the public, the legal system or legal profession that is reasonably foreseeable at the time of the lawyer's misconduct and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct.

There was potential injury to Respondent's former criminal clients if those clients had been ordered to pay back to the State the over-billing committed by Respondent. Those clients have the potential of paying for time and work performed by non attorney staff that Respondent billed at the higher attorney rate. Furthermore, real injury to the legal system has occurred as a result of Respondent's misconduct. The improper vouchers submitted by Respondent and other attorneys have prevented the legislature from considering a raise to the payment rates to court appointed attorneys, and have contributed to a bad reputation of panel attorneys to the public, and may have prevented

other attorneys from undertaking such work. The legal system is sorely in need of panel attorneys, and such misconduct has brought disrepute to the legal system.

D. The existence of any aggravating factors.

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. 209, 216, 579 S.E. 2d 550, 557 (2003) *quoting* ABA Model Standards for Imposing Lawyer Sanctions, 9.21 (1992). The aggravating factors present in this case are: (1) prior discipline: four (4) Investigative Panel Admonishments issued in December of 2009 and a Public Reprimand from the Supreme Court in June of 2013; (2) experience in the practice of law; (3) multiple offenses constituting a pattern of misconduct; (4) Respondent benefitted financially from the improper billing, although it should be noted that it was rectified at least in part by a conciliation agreement which he eventually complied with in full; (5) the submission of improper vouchers billing paralegal time as lawyer time in violation of the billing statute which he had a duty to understand and follow; and (6) fraudulent and deceitful statements to Mr. Eddy and ODC regarding his duty to report his conduct of improper billing.

E. The existence of mitigating factors.

In addition to adopting aggravating factors in Scott, the Scott court also adopted mitigating factors in lawyer disciplinary proceedings 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. 209, 216, 579 S.E.2d 550, 557 (2003) *quoting* ABA Model Standards for Imposing Lawyer Sanctions, 9.31 (1992). Mitigating factors were not envisioned to insulate a violating lawyer from discipline but should be considered in assessing what discipline is fair and appropriate under all of the circumstances. The mitigating factors in this case are: (1) the work billed was actually performed by paralegals or other staff and not otherwise unreasonable, false and fictitious (2) the respondent fully cooperated with Dana Eddy and entered into a conciliation agreement which he eventually complied with in full; (3) the respondent expressed remorse for his actions; and (4) with respect to the improper billing we did not find sufficient evidence to conclude that it was fraudulent, deceitful or a criminal act.

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, 45, 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).

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.

In 2017, the Supreme Court decided a case involving the submission of improper PDS vouchers in Lawyer Disciplinary Board v. Cooke, 239 W.Va. 40, 799 S.E.2d 117 (2017), wherein the attorney was suspended for two years. In that case, the attorney had five (5) days of over twenty (20) hours of billable time submitted for payment, and of those five (5) days, two (2) of the days were over twenty-four (24) hours. In addition, the attorney was found to have engaged in what PDS considered “‘value billing,’ i.e. billing the ‘value’ of a task, rather than the actual time it took.” Cooke, 239 W.Va. at 45, 799 S.E.2d at 122. The Supreme Court stated:

“the actual accounting of his time provided by [the attorney] is replete with admittedly excessive charges. [The attorney] maintains, however, that this excess billing reflects ‘clerical errors’ rather than deliberate overbilling. We find that the volume and nature of these errors on dates randomly selected

by PDS for further explanation – which are almost exclusively to [the attorney’s] monetary benefit – belie any suggestion that they are inadvertent. While [the attorney’s] explanations are somewhat inscrutable, that portion which is clear is patently demonstrative of excessive billing on its face. . . [The attorney] frequently ‘value billed,’ billed time at far greater than he admittedly documented, and billed for the same activity over multiple vouchers. Moreover, he frequently billed greater amounts of time than were available during certain windows of activity.”

Id. 239 W.Va. at 50-51, 799 S.E.2d at 127-128. The Supreme Court noted that “with respect to fraudulent billing, suspensions of years, rather than months are the presumptive sanction. This Court considers the protection of the public and the State coffers of paramount importance, particularly as pertains to lawyer disciplinary matters.” Cooke, 239 W.Va. at 55, 799 S.E.2d at 132.

In 2019, the Hassan, the Court suspended a lawyer for six months who admittedly engaged in “value billing” and “block billing” to calculate the amounts owed to him by the Public Defender Services (PDS) for his court-appointed representation of criminal defendants. Mr. Hassan’s billing practices resulted in impractical absurdities such as billing thirty or more hours on multiple days. Lawyer Disciplinary Bd. v. Hassan, 241 W. Va. 298, 824 S.E.2d 224, 226 (2019). Similar to the instant case, Hassan entered into a conciliation agreement with the PDS that detailed the extent of Mr. Hassan’s billing discrepancies, including billing (1) thirty or more hours on three dates; (2) twenty-four to thirty hours on four dates; (3) twenty to twenty-four hours on eleven dates;4 and (4) fifteen to twenty hours on twenty-six dates. Hassan, 824 S.E.2d 224 at 227. Hassan testified in his disciplinary hearing that he engaged in the fraudulent billing because “I can’t make any money. I’ll lose money doing it.” The Court was particularly concerned

with this testimony and noted “[w]hile we recognize that Mr. Hassan has been remorseful, we are concerned by his testimony regarding his inability to make money on court-appointed criminal defendants as it appears to be an attempt to rationalize the inaccurate billing.” Hassan, 824 S.E.2d 224, 231 (2019). A critical distinction from Hassan, of course, Hassan self reported the misconduct to ODC and cooperated fully with the investigation, and Respondent not only failed to self report, but lied to Mr. Eddy about reporting.

Finally, most recently, by Order entered April 11, 2019, the Supreme Court suspended the license of Gerald G. Jacovetty, Jr. for a period of two years for fraudulent over-billing to the Public Defender Services. Jacovetty, admitted to the Bar since 1989, entered into a conciliation agreement with PDS on or about October 27, 2015, and agreed to a reduction of the held vouchers in the amount of \$127,771.55. At the hearing, Jacovetty attributed the blame to a legal assistant, but conceded that he was responsible for the work done by the assistant and that he trained her on how to handle billing. Additionally, the legal assistant testified under oath that she completed the billing vouchers from Jacovetty’s notes and all were approved by him prior to submission to the Court. Similar to Respondent, Jacovetty did not self report, had a prior Investigative Panel Admonishment, and had substantial experience in the law. Lawyer Disciplinary Board v. Gerald G. Jacovetty, Jr., No. 18-0365 (WV 4/11/19)

West Virginia Code 29-21-13 requires panel attorneys to maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients, and provides that panel counsel be compensated for actual and necessary time expended

for services performed and expenses incurred. The submissions that Respondent made to the Court and to PDS were not true and correct. As an attorney he should have known that the invoices he was submitting were improper. Respondent engaged in conduct that was prejudicial to the administration of justice because submission of improper vouchers detracts from the fair and efficient administration of justice, hinders the ability of the PDS in meeting their goal of representing indigent clients with the limited public funds they receive, and negatively impacts the public's perception of lawyers and the court system. The Courts, especially Circuit Judges because of the number of cases they preside over, rely on attorneys to submit proper vouchers to be paid. The submission of improper vouchers, for whatever reason, by appointed attorneys reflects very poorly on the legal profession

While the facts vary, all of these cases deal with a pattern of improper billing to PDS and involve similar facts and issues: candor to the court; improper billing which resulted in overpayments benefiting the attorney; and substantial prejudice to the administration of justice. These cases hinge on an analysis of the mitigating and aggravating facts in each individual case to determine the length of the presumptive suspension of the lawyer's license to practice law. The above cases are the only guidance for what discipline should be exacted in cases that involve improper billing to the PDS and we must act fairly, consistently, and in accordance therewith.

Sanctions are not imposed only to punish the attorney, but also are designed to reassure the public's confidence in the integrity of the legal profession and to deter other lawyers from similar conduct. Committee on Legal Ethics v. White, 189 W.Va. 135, 428

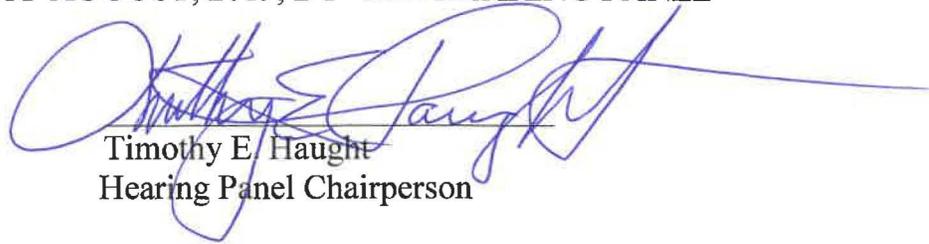
S.E.2d 556 (1993); Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987); Committee on Legal Ethics v. Roark, 181 W.Va. 260, 382 S.E.2d 313 (1989); Lawyer Disciplinary Board v. Friend, 200 W.Va. 368, 489 S.E.2d 750 (1997); Lawyer Disciplinary Board v. Keenan, 208 W.Va. 645, 542 S.E.2d 466 (2000)W.Va. 645, 542 S.E.2d 466 (2000) A principle purpose of attorney disciplinary proceedings is to safeguard the public’s interest in the administration of justice. Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

The Respondent’s underlying misconduct in improperly submitting vouchers for paralegal work as attorney work and in making false statements to Mr. Eddy and ODC about reporting his conduct warrant the following discipline. We, therefore recommend to the Court the following disciplinary sanctions for the Respondent, Daniel R Grindo:

- A. That Respondent’s law license be suspended for a period of two years;
- B. That Respondent comply with the provisions of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure;
- C. That pursuant to Rule 3.15 of the Lawyer Rules of Disciplinary Procedure, Respondent, if reinstated, shall not engage in any work compensated through Public Defender Services;
- D. That prior to filing a petition for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure, Respondent must complete an additional six (6) hours of CLE in ethics; and

- E. That prior to filing a petition for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure, Respondent must reimburse the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

ENTERED THIS 5th DAY OF AUGUST, 2019, BY THE HEARING PANEL
SUB-COMMITTEE.



Timothy E. Haught
Hearing Panel Chairperson



Stephen Mathias
Lawyer Member



Rachel Scudiere-Vitt
Lay Member