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IN THE SUPREME COURT OF APPEALS OF THE  
STATE OF WEST VIRGINIA



**LAWYER DISCIPLINARY BOARD,**

**Petitioner,**

**vs.**

**No. 19-0636**

**SCOTT A. CURNUTTE,**

**Respondent.**

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**BRIEF OF THE LAWYER DISCIPLINARY BOARD**

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Rachael L. Fletcher Cipoletti [Bar No. 8806]  
Chief Lawyer Disciplinary Counsel  
[rfcipoletti@wvdc.org](mailto:rfcipoletti@wvdc.org)  
Andrea J. Hinerman [Bar No. 8041]  
Senior Lawyer Disciplinary Counsel  
[ahinerman@wvdc.org](mailto:ahinerman@wvdc.org)  
Office of Lawyer Disciplinary Counsel  
City Center East, Suite 1200C  
4700 MacCorkle Avenue SE  
Charleston, West Virginia 25304  
(304) 558-7999  
(304) 558-4015 – *facsimile*

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## I. STATEMENT OF THE CASE

### A. NATURE OF PROCEEDINGS AND RECOMMENDATION OF THE HEARING PANEL SUBCOMMITTEE

Formal charges were filed against Scott A. Curnutte (hereinafter “Respondent”) with the Clerk of the Supreme Court of Appeals of West Virginia (hereinafter “Supreme Court”) on or about July 11, 2019, and served upon Respondent via certified mail by the Supreme Court Clerk on July 18, 2019. Senior Lawyer Disciplinary Counsel filed her mandatory discovery on or about August 2, 2019. Respondent filed his Answer to the Statement of Charges on or about August 21, 2019. Respondent provided his mandatory discovery on September 9, 2019. An evidentiary hearing was set for October 22, 2019.

Thereafter, this matter proceeded to hearing in Charleston, West Virginia, on October 22, 2019. The Hearing Panel Subcommittee (hereinafter “HPS”) was comprised of Elizabeth Layne Diehl, Esquire, Chairperson; Rhonda Harsh, Esquire; and Charlotte Norris, Layperson. Andrea J. Hinerman, Senior Lawyer Disciplinary Counsel, appeared on behalf of the Office of Lawyer Disciplinary Counsel (hereinafter “ODC”). Respondent appeared *pro se*. The HPS heard testimony from Diane Young and Respondent. In addition, ODC Exhibits 1-10, Respondent’s Exhibit 1 and Stipulations<sup>1</sup> were admitted into evidence.

On or about February 13, 2020, the HPS issued its decision in this matter and filed its “Report of the Hearing Panel Subcommittee” (hereinafter “Report”) with the Supreme Court. The HPS properly found that the evidence established that Respondent violated Rule 8.4(c) of the Rules of Professional Conduct (hereinafter “RPC”). The HPS issued the following recommendation as the appropriate sanction:

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<sup>1</sup> The parties stipulated only to Findings of Fact, Rule 3.16 Factors, and Other Stipulations. [Stipulations]

1. That Respondent's law license be suspended for one hundred (100) days;
2. 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;
3. That Respondent must comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure;
4. That prior to filing a petition for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure, Respondent must pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure; and
5. That at the time of filing a petition for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure, Respondent shall fully and accurately disclose to the Lawyer Disciplinary Board what efforts, if any, he has made to procure professional liability insurance.

**B. STIPULATED FINDINGS OF FACT**

Scott A. Curnutte (hereinafter "Respondent") is a lawyer practicing in Elkins, which is located in Randolph County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on September 23, 1991. 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. [Stipulated]

**COUNT I**  
**I.D. No. 18-01-033**  
**Complaint of Office of Lawyer Disciplinary Counsel**

Article III(A), Section 2 of the Constitution, By-Laws and Rules and Regulations of the West Virginia State Bar<sup>2</sup> provides, in part, that "[e]very active lawyer shall disclose to the West Virginia State Bar on or before September 1 of each year (1) whether the lawyer is engaged in the private practice of law; (2) if so engaged, whether the lawyer is currently covered by professional liability insurance ...; (3) if the lawyer is so engaged and not covered by professional liability insurance in the above minimum amounts, whether the lawyer has another form of adequate financial responsibility ...; (4) whether there is any unsatisfied final judgment(s) after appeal against either the lawyer, or any firm or any professional corporation in which the lawyer has practiced, ... and (5) whether the lawyer is exempt from the provisions of this Rule because the lawyer is engaged in the practice of law as a full-time government lawyer or in-house counsel and does not represent clients outside that capacity. It is the duty of every active lawyer to report any changes which occur." [Stipulated]

Article III(A), Section 3, of the Constitution, By-Laws and Rules and Regulations of the West Virginia State Bar further provides that "[t]he foregoing shall be certified by each active lawyer admitted to practice law in West Virginia on the State Bar's Active Membership Fee Notice ...." [Stipulated]

For the 2014-2015 fiscal year, Respondent reported and certified to the West Virginia State Bar on his Financial Responsibility Disclosure (hereinafter "FRD") that he and his law

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<sup>2</sup> By Order entered on December 30, 2019, the Supreme Court of Appeals of West Virginia adopted amendments to the West Virginia State Bar Constitution, Definition of the Practice of Law, West Virginia Bylaws, and West Virginia Administrative Rules. The amendments replaced the former West Virginia State Bar Constitution, Definition of the Practice of Law, West Virginia Bylaws, and West Virginia Administrative Rules in their entirety. All references to the West Virginia State Bar Constitution herein are to the West Virginia State Bar Constitution, Definition of the Practice of Law, West Virginia Bylaws, and West Virginia Administrative Rules which were in effect at the time of the conduct and the underlying proceedings.

firm, Curnutte Law Office, were insured under ALPS policy 13019-5. [Stipulated; Exhibit 1, 000003; Exhibit 6, 000055-000058; Hrg. Tr. 13-15]

For the 2015-2016 fiscal year, Respondent reported and certified to the West Virginia State Bar on his Financial Responsibility Disclosure that he and his law firm, Curnutte Law Office, were insured under ALPS policy 13019-5. [Stipulated; Id.]

For the 2016-2017 fiscal year, Respondent reported and certified to the West Virginia State Bar on his FRD that he and his law firm, Curnutte Law Office, were insured under ALPS policy 13019-5. [Stipulated; Id.]

For the 2017-2018 fiscal year, Respondent reported and certified to the West Virginia State Bar on his FRD that he and his law firm, Curnutte Law Office, were insured under ALPS policy 13019-8. [Stipulated; Id.; Hrg. Tr. 15-16]

ALPS policy 13019-5 lapsed on March 1, 2014, and ALPS policy 13019-8 did not exist. [Stipulated, Exhibit 3, 000026; Exhibit 6, 000055-000058; Hrg. Tr. 14-15]

On August 30, 2018, Respondent appeared at the ODC for a sworn statement after a complaint against him was docketed pursuant to Rule 2.4(a) of the Rules of Lawyer Disciplinary Procedure<sup>3</sup> on or about January 29, 2018. [Stipulated; Exhibit 6]

In or about 2014, Respondent became a sole practitioner after two (2) attorney employees left his firm. About a year later, Respondent hired another attorney to work in his firm. However, at the time of his sworn statement, Respondent was a sole practitioner. [Stipulated; Exhibit 6, 000037-000038, 000059-000060; Hrg. Tr. 9-10]

Respondent stated that only he had access to his West Virginia State Bar portal to input information concerning his FRD information. After his ALPS insurance policy was not renewed

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<sup>3</sup> Rule 2.4(a) of the Rules of Lawyer Disciplinary Procedure provides, in part, that the ODC “shall evaluate all information coming to its attention by complaint or from other sources alleging lawyer misconduct or incapacity....”

in 2014, and until 2016, Respondent stated that he checked the FRD box which contained his lapsed ALPS policy number, indicating that he maintained professional liability insurance. [Stipulated; Exhibit 6, 000057-00059; Hrg. Tr. 13- 17]

In 2016, when he went to check the FRD box, his old ALPS policy number was not in the box, and Respondent said he created an ALPS policy number and inputted the fictitious number into the FRD box in his attorney portal on the West Virginia State Bar website. [Stipulated; Exhibit 6, 000058; Hrg. Tr. 13-17]

Respondent admitted that for the 2015-2016, 2016-2017, and 2017-2018 fiscal years, he knew it was a misrepresentation when he checked the FRD box in the attorney portal on the West Virginia State Bar website indicating that he had professional liability insurance coverage. [Stipulated; Exhibit 6, 000057-000058; Hrg. Tr. 13-17]

Respondent also acknowledged that when his now former attorney employee asked him about the insurance policy information so that she could input the required FRD information to comply with her own reporting requirement for fiscal years 2015-2016, 2016-2017, and 2017-2018, Respondent "pulled up [his] own information on the bar site and then just read it off to her is [his] recollection." Respondent admitted that at the time he provided his attorney employee with the insurance policy information, he knew that the ALPS policy information contained therein was not accurate. [Stipulated; Exhibit 6, 000066-000067; Hrg. Tr. 16-17]

### **C. CONCLUSIONS OF LAW**

Because Respondent certified to the West Virginia State Bar on his FRD that he was engaged in the private practice of law in the State of West Virginia and that he was currently covered by professional liability insurance for the fiscal years 2015-2016, 2016-2017, and 2017-2018, when he knew his ALPS professional liability insurance policy had lapsed on or about

March 1, 2014, and he in fact did not have professional liability insurance, he violated Rule 8.4(c) of the West Virginia Rules of Professional Conduct, as follows:

**Rule 8.4. Misconduct.**

It is professional misconduct for a lawyer to:

\* \* \*

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

Because Respondent was dishonest to his now former attorney employee when he provided her with false information concerning his professional liability insurance coverage, he also violated Rule 8.4(c) of the West Virginia Rules of Professional Conduct, as provided *supra*.

**II. SUMMARY OF ARGUMENT**

This Court 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). The ODC asserts that the findings of fact and conclusions of law made by the HPS of the Lawyer Disciplinary Board in its Report were correct and supported by reliable, probative, and substantial evidence on the whole adjudicatory record. The HPS correctly found that Respondent violated the Rules of Professional Conduct and recommended that Respondent be suspended for 100 days, that he complete an additional six (6) hours of CLE in ethics and pay the costs of these proceedings prior filing a petition for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure, that he comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure, and that at the time of filing a petition for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure, he shall fully and accurately disclose to the Lawyer Disciplinary Board what efforts, if any, he has made to procure professional liability insurance.

The HPS properly found that the clear and convincing evidence established that Respondent committed two (2) violations of Rule 8.4(c) of the Rules of Professional Conduct. In ordering such sanction in these proceedings, this Honorable Court will be serving its goals of protecting the public, reassuring the public as to the reliability and integrity of attorneys, and safeguarding its interests in the administration of justice.

### **III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

The Office of Lawyer Disciplinary Counsel filed its consent to the recommended decision of the HPS on March 10, 2020. Respondent filed an objection on March 16, 2020. This Honorable Court's March 17, 2020 Order set this matter for oral argument on September 22, 2020, pursuant to Rule 19 of the Rules of Appellate Procedure.

### **IV. ARGUMENT**

#### **A. STANDARD OF PROOF**

In lawyer disciplinary matters, a *de novo* standard of review applies to questions of law, questions of application of the law to the facts, and questions of appropriate sanction to be imposed. Roark v. Lawyer Disciplinary Board, 207 W. Va. 181, 495 S.E.2d 552 (1997); Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 452 S.E.2d 377 (1994). The Supreme Court of Appeals gives respectful consideration to the Lawyer Disciplinary Board's recommendations as to questions of law and the appropriate sanction, while ultimately exercising its own independent judgment. McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381.

Substantial deference is to be given to the Lawyer Disciplinary Board's findings of fact unless the findings are not supported by reliable, probative, and substantial evidence on the whole record. McCorkle, Id.; Lawyer Disciplinary Board v. Cunningham, 195 W. Va. 27, 464

S.E.2d 181 (1995). At the Supreme Court level, "[t]he burden is on the attorney at law to show that the factual findings are not supported by reliable, probative, and substantial evidence on the whole adjudicatory record made before the Board." Cunningham, 464 S.E.2d at 189; McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381.

The charges against an attorney must be proven by clear and convincing evidence pursuant to Rule 3.7 of the Rules of Lawyer Disciplinary Procedure. *See*, Syl. Pt. 1, Lawyer Disciplinary Board v. McGraw, 194 W. Va. 788, 461 S.E.2d 850 (1995). "Stipulations or agreements made in open court by the parties in a trial of a case and acted upon are binding and a judgment founded thereon will not be reversed." Syl. Pt. 3, Matter of Starcher, 202 W.Va. 55, 501 S.E.2d 772 (1998) *citing* Syl. Pt. 1, Butler v. Smith's Transfer Corporation, 147 W.Va. 402, 128 S.E.2d 32 (1962). "In a disciplinary proceeding against a judge, in which the burden of proof is by clear and convincing evidence, where the parties enter into stipulations of fact, the facts so stipulated will be considered to have been proven as if the party bearing the burden of proof has produced clear and convincing evidence to prove the facts so stipulated." Syl. Pt. 4, Matter of Starcher, 202 W.Va. 55, 501 S.E.2d 772 (1998). The Court has also noted that the same rule would apply to pre-trial stipulations. Matter of Starcher, 202 W.Va. at 61, 501 S.E.2d at 778.

The Supreme Court of Appeals is the final arbiter of formal legal ethic charges and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys' licenses to practice law. Syl. Pt. 3, Committee on Legal Ethics v. Blair, 174 W.Va. 494, 327 S.E.2d 671 (1984); Syl. Pt. 7, Committee on Legal Ethics v. Karl, 192 W.Va. 23, 449 S.E.2d 277 (1994).

**B. ANALYSIS OF SANCTION UNDER RULE 3.16 OF THE  
RULES OF LAWYER DISCIPLINARY PROCEDURE**

Syl. Point 4 of Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d. 722 (1998) holds: Rule 3.16 of the Rules of Lawyer Disciplinary Procedure provides that when imposing a sanction after a finding of lawyer misconduct, the Court shall consider: (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. A review of the extensive record in this matter indicates that Respondent has transgressed all four factors set forth in Jordan.

**1. Whether Respondent has violated a duty owed to a client, to the public, to the legal system or to the legal profession.**

The evidence in this case establishes by clear and convincing proof that Respondent violated duties owed to his clients, to the public and to the legal profession. 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, as an officer of the court, a lawyer's duties include maintaining the integrity of the profession. Respondent fell short of these duties when he certified to The West Virginia State Bar on his required FRD form that he was covered by professional liability insurance for three (3) consecutive reporting years following the lapse of his professional liability insurance in 2014. [Stipulations, ¶¶ 4, 5, 6, 7, 8] Respondent also admitted that when his then associate inquired about the law firm's professional liability insurance policy information, he provided her with the lapsed policy information; thus, causing his then associate to report on her own required FRD form that she was covered by

professional liability insurance, when in fact, she was not covered. [Stipulations, ¶ 14; Hrg. Tr. 16-17] Clearly, Respondent's conduct is contrary to what is required of licensed members of The West Virginia Bar, pursuant to Article III, Section 2 of The West Virginia State Bar's Constitution, By-Laws and Rules and Regulations which mandates the yearly certified reporting of whether a lawyer is "currently covered by professional liability insurance." Further, while Respondent is required to report whether he is covered by professional liability insurance, Respondent is not required under the Constitution, By-Laws and Rules and Regulations to have professional liability insurance. If Respondent was not covered by professional liability insurance and he had reported truthfully on his FRD, he would not now be facing a sanction for violating the Rules of Professional Conduct. Respondent, instead, chose to lie about the existence of the status of his professional liability insurance for three (3) years.

**2. Respondent acted intentionally, knowingly or negligently.**

Respondent stipulated that he acted in both a knowing and negligent manner in this matter. "Knowledge" as defined by the American Bar Association is "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." The American Bar Association defines "negligence" as "the failure of a lawyer to heed a substantial risk that the 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." Respondent stipulated that for the first two (2) years after his professional liability insurance lapsed in 2014, his lapsed policy number reappeared in the FRD box and he certified to The West Virginia State Bar that this policy was still in effect. [Exhibit 6, 000057-00059; Hrg. Tr. 13- 17] When the lapsed policy number did not "reappear" in the FRD box on the third year, Respondent then imputed a policy number for a professional liability

insurance policy that did not exist. [Exhibit 6, 000058; Hrg. Tr. 13-17] Respondent did not obtain another professional liability insurance policy until March of 2018. [Exhibit 7]

**3. The amount of actual or potential caused by the lawyer's misconduct.**

Respondent stated at his sworn statement that no claims were made during the time period in which Respondent and his law firm were not covered by a professional liability insurance policy. However, Respondent created a situation wherein he, his law firm, his former attorney employee, and his clients were clearly exposed to potential harm by reporting that he was covered by professional liability insurance when in fact, he was not. [Exhibit 6, 000062] Moreover, Respondent's noncompliance with the administrative rules of The West Virginia State Bar and the Rules of Professional Conduct is clearly detrimental to his former attorney employee, the public, the legal system and the legal profession.

**4. 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 parties stipulated that the following aggravating factors are present in this matter: (1) dishonest or selfish motive; (2) a pattern of misconduct in that the conduct involved multiple reporting years; and (3) substantial experience in the practice of law as Respondent has been admitted to practice law since September 23, 1991.

**5. The existence of any mitigating factors.**

In addition to adopting aggravating factors in Scott, 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. 209, 216, 579 S.E.2d 550, 557 (2003) quoting ABA Model Standards for Imposing Lawyer Sanctions, 9.31 (1992).<sup>4</sup> It should be clear that mitigating factors were not envisioned to insulate a violating lawyer from discipline. The parties stipulated that the following mitigating factors are present in this matter: (1) Respondent does not have a prior disciplinary record in that while thirteen (13) complaints, not including the instant matter, have been filed against Respondent since he was admitted to practice in 1991, none resulted in any discipline being imposed on Respondent [Exhibit 10]; (2) full and free disclosure to disciplinary board and cooperative attitude toward proceedings; (3) good faith effort to rectify the consequences of his conduct; and (4) remorse. Respondent testified at the hearing “that [he] know[s] what [he] did was wrong and that [he is] very sorry for it, particularly with respect to the other person.” [Hrg. Tr. 29-30]

**C. 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

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<sup>4</sup> The Scott Court held that mitigating factors which may be considered in determining the appropriate sanction to be imposed against a lawyer for violating the Rules of Professional Conduct include: (1) absence of a prior disciplinary record; (2) absence of a dishonest or selfish motive; (3) personal or emotional problems; (4) timely good faith effort to make restitution or to rectify consequences of misconduct; (5) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (6) inexperience in the practice of law; (7) character or reputation; (8) physical or mental disability or impairment; (9) delay in disciplinary proceedings; (10) interim rehabilitation; (11) imposition of other penalties or sanctions; (12) remorse; and (13) remoteness of prior offenses.

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).

Absent any aggravating or mitigating circumstances, the *ABA Model Standards for Imposing Lawyer Sanctions* provide that:

Standard 7.2. Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury to a client, the public, or to the legal system.

Absent any aggravating or mitigating circumstances, the *ABA Model Standards for Imposing Lawyer Sanctions* provide in cases with non-criminal conduct involving dishonesty, fraud, deceit, or misrepresentation, that:

Standard 5.13. Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on that lawyer's fitness to practice law.

In Lawyer Disciplinary Board v. Losch, 219 W.Va. 316, 633 S.E.2d 261 (2006) (per curium), the Supreme Court of Appeals determined that the appropriate discipline was a

reprimand after finding that Mr. Losch violated Rules 8.4(c) and 8.4(d) of the Rules of Professional Conduct when he altered a document after it was signed by the Circuit Court and then caused it to be served on an individual. *Citing Office of Lawyer Disciplinary Counsel v. Galford*, 202 W.Va. 587, 590, 505 S.E.2d 650, 653 (1998) (per curium), the Supreme Court of Appeals noted that “[h]onesty is one of the cornerstones of the legal profession,” and that Losch’s actions “were unethical and clearly wrong.” However, the Court found that the violation in that case represented a single act rather than a pattern of professional misconduct, and was the first instance that Losch had been before the Court for a violation of the Rules of Professional Conduct. As such, the Court opined that a public reprimand would effectively punish Losch, deter other members of the Bar from similar professional misconduct, and serve to ensure public confidence in the legal profession *See, e.g. Lawyer Disciplinary Board v. Nelson v. Bickley*, No. 22683 (3/9/95) (unpublished) (lawyer publicly reprimanded for signing clients’ names to a verification to be attached to a Request for Interrogatories and directing his employee to notarize the signature).

However, the Supreme Court of Appeals has also issued suspensions to attorneys who violated Rule 8.4(c) and Rule 8.4(d) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. In *Lawyer Disciplinary Board v. Ansell*, 210 W.Va. 139, 556 S.E.2d 106 (2001), Ansell was issued a sixty (60) day suspension when he attempted to obtain payment legitimately due him from the Public Defender Services for work he performed by the use of altered orders. Rather than properly obtaining appropriate orders approving his payment from the Court, Ansell altered certified copies of existing orders he had obtained in another case preserving the Judge’s signature. Ansell then submitted the altered orders to the Public Defender Services, which returned them to Ansell unpaid. The Court concluded that Ansell’s conduct of

altering court orders violated Rule 8.4(c), and that by attempting to circumvent correct procedures, he engaged in conduct prejudicial to the administration of judges. Ansell, 210 W.Va. 139, 556 S.E.2d 106 (2001).

Likewise, in Office of Lawyer Disciplinary Counsel v. Galford, 202 W.Va. 587, 505 S.E.2d 650 (1998) (per curium), the Court issued a one year suspension when it was discovered after a testator's death, that Galford had mistakenly omitted an heir from a will he had prepared. Galford then altered the will to remedy the mistake and then attempted to pass the will through probate. In suspending Galford, the Court noted that honesty is one of the cornerstones of the legal profession. Galford, 202 W.Va. 587, 590, 505 S.E.2d 650, 653 (1998).

The evidence in the instant matter demonstrates that Respondent engaged in a pattern of dishonest conduct for three (3) years when he certified to The West Virginia State Bar, pursuant to his yearly reporting requirement, that he had professional liability insurance, when, in fact, he did not. Respondent also intentionally entered false information on his FRD electronic submission after his lapsed policy number did not reappear on the electronic form. Moreover, Respondent caused his then associate to certify the same false information to The State Bar of West Virginia when he provided her with the false policy number. Thus, the appropriate sanction in this matter a period of suspension.

The nature of Respondent's misconduct is also akin to cases wherein lawyers have been suspended for knowingly omitting, misrepresenting or otherwise being dishonest in providing required information on bar admission applications and in engaging in deceptive conduct when knowingly continuing to practice law while administratively suspended for failure to pay dues and/or meet mandatory continuing legal education ("CLE") requirements. In Committee on Legal Ethics v. Taylor, 190 W.Va. 133, 437 S.E.2d 443 (1993), the Supreme Court suspended

Taylor's license for six (6) months, among other sanctions which also included another six month suspension which was to run consecutively, for continuing to practice law knowing that his law license had been suspended for deficiencies in his CLE credits, in violation of Rule 5.5(a) of the Rules of Professional Conduct, and for knowingly writing a check on an account that lacked sufficient funds, and failing to make restitution, in violation of applicable West Virginia Code, and Rules 8.4(b) and 8.4(c) of the Rules of Professional Conduct. Taylor had been suspended for failure to comply with CLE requirements for the 1987-88 reporting year and had been sent notices and had discussed the requirements for reinstatement with an employee of The West Virginia State Bar. In September of 1990, while he was still suspended, Taylor sought employment at a Public Defender's office. On October 8, 1990, Taylor was offered the position at the Public Defender's office and began work. Taylor did not seek reinstatement from his CLE suspension until November 5, 1990. Taylor was subsequently terminated from the Public Defender's office on November 9, 1990. The Court noted that Taylor had "deliberately misled" the Public Defender's Office "in that he made numerous inaccuracies on his resume regarding his credentials in fabricating information and withholding other pieces of information." In addition to finding that Taylor's conduct violated Rule 5.5(a) of the Rules of Professional Conduct, the Court also found that his conduct was also a "clear" violation of Article II, § 3 of the By Laws of the West Virginia State Bar.<sup>5</sup> Taylor, 190 W.Va. at 137-8, 437 S.E.2d at 447-8. See also, Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 579 S.E.2d 550 (2003) (attorney's license suspended for three (3) years for practicing law while license suspended for failure to pay dues, lying about the status of his law license prior to being sworn in a prosecutor, and

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<sup>5</sup> Article II, § 3 of the By-Laws of the West Virginia State Bar provides: "An active member in good standing shall be a person lawfully admitted to the practice of the law in the State of West Virginia, who is lawfully engaged in the practice of law in this State, who is enrolled as an active member, who is not under suspension, and who shall each year pay the annual active membership fee to the state bar."

submitting falsified copies of a backdated check and certified mail receipt to The State Bar wherein he attempted to show that he had timely paid his bar dues, among other misconduct); Lawyer Disciplinary Board v. Kohout, Supreme Court No. 22629 (4/14/95) (unpublished) (lawyer suspended for two (2) years for making false statements in connection with his application for admission to The West Virginia State Bar; engaging in dishonesty, fraud, deceit, or other misrepresentation by repeatedly concealing the fact that he had attended and been suspended from the Cumberland Law School; and had been suspended for three years from practice before the Bankruptcy Court for the Northern District of West Virginia).

The public, including Respondent's clients and potential clients, must be able to rely on the information disseminated by The West Virginia State Bar on The West Virginia State Bar's website. Therefore, it is of the utmost importance that the information maintained by The West Virginia State Bar must be true and accurate. Moreover, the public, legal professionals and the Courts of this State expect that the State's lawyers will abide by the rules that govern the practice of law. Respondent's conduct demonstrates a disregard for personal integrity and the honor of the profession. Lawyers who engage in the type of misconduct exhibited by Respondent must be suspended because such a sanction is necessary to deter other lawyers from engaging in similar conduct and to restore faith of the public in the integrity of the legal profession.

## **V. CONCLUSION**

In reaching its recommendation as to sanctions, the Hearing Panel Subcommittee considered the evidence, the facts and recommended sanction, the aggravating factors and mitigating factors. For the reasons set forth above, the Hearing Panel Subcommittee recommended the following sanctions:

1. That Respondent's law license be suspended for one hundred (100) days;

2. 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;
3. That Respondent musts comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure;
4. That prior to filing a petition for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure, Respondent must pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure; and
5. That at the time of filing a petition for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure, Respondent shall fully and accurately disclose to the Lawyer Disciplinary Board what efforts, if any, he has made to procure professional liability insurance.

Accordingly, the Office of Lawyer Disciplinary Counsel urges that this Honorable Court uphold the sanctions recommended by the Hearing Panel Subcommittee.

*Respectfully submitted,*  
The Lawyer Disciplinary Board  
By Counsel

  
Rachael L. Fletcher Cipoletti [Bar No. 8806]  
Chief Lawyer Disciplinary Counsel  
[rfcipoletti@wvdc.org](mailto:rfcipoletti@wvdc.org)  
Andrea J. Hinerman [Bar No. 8041]  
Senior Lawyer Disciplinary Counsel  
[ahinerman@wvdc.org](mailto:ahinerman@wvdc.org)  
Office of Lawyer Disciplinary Counsel  
City Center East, Suite 1200C  
4700 MacCorkle Avenue SE  
Charleston, West Virginia 25304  
(304) 558-7999  
(304) 558-4015 – *facsimile*