No. 24011 -- Lawyer Disciplinary Board v. Richard F. Neely and Roger D. Hunter, members of the West Virginia State Bar

Workman, J., concurring:

I initially put down for a concurring opinion to say only that although the Lawyer Disciplinary Board dropped the charge involving the letter written to the complainant herein, it should be made clear that the tone and tenor of that letter was threatening and it was wrong. Indeed, it is the kind of thing that can give lawyers a very bad reputation.

The record shows that Mrs. Hawks runs a reputable business that provides a real service to children whose parents must leave them in day care in order to go to work. The letter sent to her by the lawyer here was intimidating and basically threatened to ruin her business and her reputation if she did not meet its demands. This is not a legitimate effort at settlement, but more in the manner of intimidation. As the majority opinion points out, had the charge involving the letter not been dropped by the Lawyer Disciplinary Board, Neely may well have been sanctioned.

After reading the local Charleston newspapers on July 16 and 17, however, I feel it necessary to expand this concurring opinion to say more. If quoted correctly in

the newspapers, Mr. Neely and Mr. Hunter had the audacity to once again claim the lawsuit they brought against Mrs. Hawks and the Fort Hill Day Care Center had merit.[1] This is fairly incredible in view of the fact that the lower court dismissed part of the lawsuit as being without merit and in view of the fact that lawyers Neely and Hunter sought a voluntary dismissal of their remaining claims (and agreed not to appeal the lower court's dismissal)[2] in exchange for the defendants agreeing to dismiss a Rule 11[3] motion seeking monetary sanctions against them.

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[1]The *Charleston Daily Mail* on July 16, 1998, and the *Charleston Gazette* on July 17, 1998, quoted Richard Neely as saying that the charges against him were "silly," and characterized the ethics complaint as an allegation "that I too vigorously went to bat for a black autistic child allegedly abused in a day care center." (emphasis added) Roger Hunter is quoted as saying that the lawsuit (against the center) was "meritorious."

[2]According to the majority opinion:

> On December 11, 1995, the defendants moved for summary judgment. The court dismissed Mr. and Mrs. Stephens causes of action for intentional infliction of emotional distress. The court also dismissed Quinton's claim for intentional infliction of emotional distress for the "many instances" in which he was allegedly strapped in a chair in a dark room for many hours. This claim was dismissed because the only evidence plaintiffs produced during discovery was the testimony of Mary Ellen Davis, Quinton's special education teacher, that one day she found Quinton in the chair in his classroom when all the other children were up and about in the same room. Finally, the claim for punitive damages was dismissed for being duplicative of the claim for damages from intentional infliction of emotional distress. Only Quinton's claim for intentional infliction of emotional distress was permitted to go forward.
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> Subsequently, the plaintiffs requested a voluntary dismissal

It is amazing that after getting off by the skin of their teeth for filing a spurious lawsuit and writing a threatening letter, Neely and Hunter would actually again attempt to cast aspersions against this individual and this day care center. These lawyers may never learn their lesson until the time comes when a real sanction is imposed, either

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> of the remaining claim in order to appeal the summary judgment order. Defendants then filed a motion for sanctions under Rule 11 of the West Virginia Rules of Civil Procedure. Thereafter, the parties reached an agreement whereby plaintiffs agreed to dismiss the appeal and all claims with prejudice in return for the defendants dismissing the Rule 11 motion and agreeing not to seek attorney sanctions against either Mr. Hunter or Mr. Neely.

[3]At that time, Rule 11 provided, in pertinent part:

> The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Rule 11 was amended on February 19, 1998, to correspond with Rule 11 of the Federal Rules of Civil Procedure and became effective April 6, 1998.

through ethical proceedings or in the form of a lawsuit. If they were misquoted, they should immediately demand that a correction be printed. But if they were not misquoted, then shame on them for conducting themselves in this manner. It does not bring respect to the profession.

I am authorized to state that Justice Maynard joins in the concurring opinion.