

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2017 Term

No. 16-0003

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**LAWYER DISCIPLINARY BOARD,
Petitioner**

V.

**LAUREN THOMPSON,
A MEMBER OF THE WEST VIRGINIA STATE BAR,
Respondent**

**Lawyer Disciplinary Proceeding
No. 15-03-432
LAW LICENSE SUSPENDED AND OTHER SANCTIONS**

**Submitted: March 7, 2017
Filed: April 10, 2017**

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JUSTICE DAVIS delivered the Opinion of the Court.

CHIEF JUSTICE LOUGHRY dissents and reserves the right to file a dissenting opinion.

JUSTICE WORKMAN concurs in part, and dissents in part, and reserves the right to file a separate opinion.

SYLLABUS BY THE COURT

1. “A *de novo* standard applies to a review of the adjudicatory record made before the [Lawyer Disciplinary Board] as to questions of law, questions of application of the law to the facts, and questions of appropriate sanctions; this Court gives respectful consideration to the [Board’s] recommendations while ultimately exercising its own independent judgment. On the other hand, substantial deference is given to the [Board’s] findings of fact, unless such findings are not supported by reliable, probative, and substantial evidence on the whole record.” Syllabus point 3, *Committee on Legal Ethics v. McCorkle*, 192 W. Va. 286, 452 S.E.2d 377 (1994).

2. “This Court is the final arbiter of legal ethics problems and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys’ licenses to practice law.” Syllabus point 3, *Committee on Legal Ethics v. Blair*, 174 W. Va. 494, 327 S.E.2d 671 (1984).

3. “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.” Syllabus point 3, *Committee on Legal Ethics v. Walker*, 178 W. Va. 150, 358 S.E.2d 234 (1987).

4. “Rule 3.16 of the West Virginia Rules of Lawyer Disciplinary Procedure enumerates factors to be considered in imposing sanctions and provides as follows: ‘In imposing a sanction after a finding of lawyer misconduct, unless otherwise provided in these rules, the Court [West Virginia Supreme Court of Appeals] or Board [Lawyer Disciplinary Board] shall consider the following factors: (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.’” Syllabus point 4, *Office of Lawyer Disciplinary Counsel v. Jordan*, 204 W. Va. 495, 513 S.E.2d 722 (1998).

5. “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 dishonest or selfish motive; (3) personal or emotional problems; (4) timely good faith effort to make restitution or rectify consequences of misconduct; (5) full and free disclosure to the 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.” Syllabus point 3, *Lawyer Disciplinary Board v. Scott*, 213 W. Va. 209, 579 S.E.2d 550 (2003).

6. “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.” Syllabus point 4, *Lawyer Disciplinary Board v. Scott*, 213 W. Va. 209, 579 S.E.2d 550 (2003).

Davis, Justice:

The issue before us arises out of Lauren Thompson's ("Ms. Thompson") acts and failures to act in her capacity as a court-appointed guardian ad litem representing the interests of an infant. The conduct includes the disregard of orders of this Court commanding the filing of appellate briefs or summary responses in the setting of appeals brought by parents who had their parental rights terminated at the circuit court level.

The West Virginia State Bar Lawyer Disciplinary Board instituted formal disciplinary charges against Ms. Thompson on January 6, 2016, with the filing of a Statement of Charges. Following discovery and a hearing, the Hearing Panel Subcommittee ("HPS") of the Lawyer Disciplinary Board found violations of the West Virginia Rules of Professional Conduct ("the Rules of Professional Conduct") and has recommended that Ms. Thompson be suspended for a period of three months, required to petition for reinstatement, and attend an additional twelve hours of continuing legal education in the area of abuse and neglect and/or law office management, in addition to other recommended sanctions.

Ms. Thompson objects to the recommended suspension. She contends the appropriate sanction for her violation of the Rules is a public reprimand. Alternatively, she requests that this Court adopt the recommendation of the HPS of suspension from the practice of law for three months; but, she seeks credit for the time she has been prohibited

from serving as appointed counsel in criminal and abuse and neglect matters during the pendency of the disciplinary process.

The Office of Disciplinary Counsel (“ODC”) disagrees with the recommendation as to sanctions. Specifically, the ODC contends that the length of the proposed three month sanction is inadequate given the circumstances, which include malfeasance and intentional contempt.

We have undertaken a thorough review of the record submitted, the briefs, and the arguments of the ODC and Ms. Thompson, as well as the applicable legal precedent. This Court has carefully considered the report and recommendations of the HPS. Upon our review of both aggravating and mitigating factors, as well as considering the high priority nature of abuse and neglect cases and the tender years of a vulnerable infant child who lacked a voice, this Court adopts the three month suspension from the practice of law recommended by the HPS, together with the recommendation of the completion of additional continuing legal education. This Court concludes that automatic reinstatement after suspension of three months pursuant to Rule 3.31 of the Rules of Lawyer Disciplinary Procedure is appropriate, and we further require Ms. Thompson to pay the costs of these disciplinary proceedings.

I.

FACTUAL AND PROCEDURAL HISTORY

A. Conduct Leading to Allegations of Misconduct

As we proceed to set out the factual and procedural history of this matter, we observe that the ODC and Ms. Thompson commendably worked cooperatively to enter into extensive stipulations of fact concerning the circumstances surrounding this disciplinary matter. Those stipulated facts were adopted in nearly verbatim form by the HPS in its Report. At the hearing, additional facts were elicited, and findings were made by the HPS. The ODC has advised that it has found no errors in the findings of fact made by the HPS. Ms. Thompson has not asserted any error in the findings of fact. The factual history we provide is drawn from the stipulations, the facts set forth by the HPS, and pertinent testimony elicited at the hearing before the HPS.

At all relevant times, Ms. Thompson was a lawyer practicing in Williamson, Mingo County, West Virginia. Upon passage of the bar examination, Ms. Thompson was admitted to the West Virginia State Bar on October 20, 2009. As such, Ms. Thompson is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

Upon admission to the practice of law, Ms. Thompson opened a solo practice in Williamson, West Virginia. Her practice consisted of personal injury litigation, appointments by the court to represent indigent criminal defendants, and appointments in child abuse and neglect cases initiated by the Child Protective Services Division (“CPS”) of the West Virginia Department of Health and Human Resources (“DHHR”) wherein CPS sought temporary or permanent custody of children due to allegations of abuse or neglect.

In 2013, Ms. Thompson was appointed guardian ad litem of a four-month-old infant who was the subject of CPS proceedings. Ms. Thompson represented the child as guardian ad litem throughout the course of the abuse and neglect proceedings. On or about February 9, 2015, the Circuit Court of Mingo County, the Honorable John Cummings, Senior Status Judge, presiding, entered an order terminating the parental, custodial, and guardianship rights of the child’s biological mother and father. Ms. Thompson represented to Judge Cummings that, upon her independent investigation, she agreed with the position of CPS and recommended that the parental rights be terminated.

Both the mother and father filed notices of intent to appeal with this Court. Initially, we issued separate scheduling orders for each parent’s appeal. Subsequently, this Court issued an order directing the filing of a joint appendix and further ordering the filing

of briefs or summary responses by Ms. Thompson as guardian ad litem on or before May 20, 2015.

Ms. Thompson failed to file a brief or summary response on or before May 20, 2015. On May 22, 2015, a staff member of the West Virginia Supreme Court Clerk's Office ("Clerk's Office") telephoned Ms. Thompson's law office and left a message with an office assistant advising that the briefs in the pending appeals were past due. Thereafter, no responsive briefs were filed by Ms. Thompson.

By Order entered May 27, 2015, this Court issued Notices of Intent to Sanction and Amended Scheduling Orders in the appeals of both the father and the mother. The Order directed Ms. Thompson to file briefs or summary responses on or before June 1, 2015. She was reminded that failure to comply could result in the imposition of sanctions. The Notices and Orders were issued through certified mail.

Again, Ms. Thompson failed to file a brief or summary response as required of guardians ad litem and as ordered by this Court. On or about Friday, June 5, 2015, a staff attorney in the Clerk's Office sent Ms. Thompson an e-mail advising her that the Court had issued Notices of Intent to Sanction. Copies of the Notices were included as attachments to the e-mail. The staff attorney requested that Ms. Thompson file her responses as soon as

possible. On Monday, June 8, 2015, Ms. Thompson e-mailed the staff attorney stating, in pertinent part, “I have no idea what is going on. . . . I was unaware of any of this. I will figure out what has happened today.”

Thereafter, the staff attorney replied to Ms. Thompson advising her that the responses could be submitted by fax to the Clerk’s Office together with a motion to file the responses out of time. The staff attorney attached a signed confirmation demonstrating that Ms. Thompson’s law office had received the Notices and Orders of May 27, 2015.

We note that Ms. Thompson testified before the HPS that she was unaware of the pending appeals until she received the e-mail on June 8, 2015. Specifically, Ms. Thompson testified to a lack of staff and staff failures at her office that resulted in her lack of knowledge of the appeals. Ms. Thompson did recognize her ultimate responsibility for any problems and challenges with her staff.

Still having received no briefs or summary responses from Ms. Thompson, this Court, on its own motion, entered Orders on June 11, 2015, wherein rules to show cause in contempt were awarded and issued against Ms. Thompson in both appeals for her failure to timely file the response briefs. The rules to show cause why she should not be held in contempt of court were returnable on September 2, 2015, unless sooner mooted by the filing

of briefs. Ms. Thompson personally signed the return receipt confirmation on June 17, 2015, indicating she received the Orders of June 11, 2015. Nevertheless, Ms. Thompson continued in her failure to represent the infant and failed to file any responses.

The staff attorney testified before the HPS that the efforts of the Court and the Clerk's Office were directed at obtaining the responses so that the appeals could be fully considered and timely decided prior to the end of the term in June 2015. That did not occur. Thereafter, in a continuing effort to obtain the briefs or summary responses, so that the appeals could be decided as soon as possible upon the beginning of the September 2015 term of Court, staff in the Clerk's Office called, contacted, and/or attempted to contact Ms. Thompson about the filing of responses on July 5, 2015; July 23, 2015; August 7, 2015; and August 14, 2015. On each occasion, Ms. Thompson was unavailable to take the calls. Further, Ms. Thompson did not return any of the phone calls or contacts from the Clerk's Office.

As indicated above, Ms. Thompson initially attributed her failure to file the responsive briefs or summaries to her lack of knowledge of the appeals and their corresponding deadlines. However, she testified at the HPS hearing that, at some point, she decided not to file responses so she could appear before the Court and present her concerns and frustrations with perceived failures on the part of DHHR in Mingo County.

Indeed, at a judicial review hearing to consider the case of the infant, before Judge Cummings in Mingo County on August 14, 2015, the following colloquy took place:

The Court: First let me ask what is the status of the appeal?

Ms. Thompson: The Guardian ad litem has yet to answer.

The Court: And who is the Guardian ad litem?

Ms. Thompson: That would be me. Judge, as I've probably mentioned before, I'm *agitated on other issues*. They've invited me to come up and speak to the Supreme Court, which I'm tempted to—

The Court: They've invited you or told you to?

Ms. Thompson: If it's not done by a certain date, then I can come on up. I don't know—It's like *this case isn't impacted by the reason I'm dragging my feet*. I should probably just submit it, but, it's like you know, I've had—last week I had a child that should have had her college paid for not get Chafee Funds because the Department won't do their job and it's like—

The Court: Well, let me state this. File something with them. I cannot take any action on this.

Ms. Thompson: I know, sir, and no one else is willing to.

The Court: And no one else can until that matter. I can take the action of retaining—keeping things as status quo, which I must unless there is some adverse report. But get that filed because they will sanction you.

(Emphasis added).

Ms. Thompson proceeded to indicate she did not think she would be sanctioned and that this Court needed to talk to her. Judge Cummings told her that if she did not get a response filed, he, too, would sanction her. He then essentially apologized to the foster parents of the child for the delay and the fact that he could not proceed on permanency until the appeals of the biological parents were concluded. We observe that one of the foster parents testified before the HPS that Ms. Thompson informed him that the reason she had not filed the responses was that she was trying to make a point in another case.

Before the HPS, Judge Cummings testified that he advised Ms. Thompson, on at least one other occasion, to file responses with this Court. Judge Cummings informed Ms. Thompson that there was a right way and a wrong way to get her perceived issues before the Court and clearly instructed her that failing to respond was the wrong way. He also advised Ms. Thompson that there were other mechanisms to handle her concerns, such as working through DHHR, taking action with the local prosecutor, or by instituting extraordinary writ proceedings before this Court.

Nevertheless, despite the efforts of the Clerk's Office and the direction of Judge Cummings, Ms. Thompson persisted in refusing to file the briefs. On August 31, 2015, staff in the Clerk's Office again attempted to contact Ms. Thompson about filing the briefs in the appeals. Ms. Thompson's assistant represented that responses would be filed

“before tomorrow.” Finally, on September 1, 2015, the day before oral argument on the rules to show cause, Ms. Thompson filed a motion to submit her briefs out of time and submitted briefs in both pending appeals. Ms. Thompson indicated that the responses were late due to staffing issues and calendaring errors. She asserted that the child was awaiting adoption by the foster parents, and, therefore, no party was prejudiced by her failure to file the briefs in the abuse and neglect proceedings. In the briefs, Ms. Thompson did not identify any concerns or issues with CPS or DHHR activities in Mingo County.

On September 3, 2015, this Court, on its own motion, entered an Order finding that the justification provided by Ms. Thompson for the untimely filing of the briefs was “unsatisfactory given the need for these abuse and neglect cases to be considered as expeditiously as possible in order to ensure the timely permanency for the minor child involved. . . .” This Court issued a second rule to show cause against Ms. Thompson directing her to appear on September 16, 2015, to show cause why she should not be held in contempt, denied eligibility for future guardian appointments, and subjected to further sanctions due to the untimely filings. She was ordered to file a written response by September 9, 2015. The Order provided that the written response did not negate Ms. Thompson’s obligation to appear before this Court.

A faxed copy of Ms. Thompson's Response to the Order to Show Cause was received in the Clerk's Office at 8:45p.m. on September 9, 2015. For the first time, Ms. Thompson represented the reason for the late filing of the briefs was to place her concerns about the actions and inactions of Mingo County DHHR, which made it difficult to act in the best interest of children, before an alternate court. Ms. Thompson indicated that the responsibilities of guardians ad litem are difficult enough without the necessity of dealing with appeals filed on behalf of "disinterested parties." She stated that she believed "filers" should be required to show that the petitioners are "active, willing participants in their appeal." In confusing fashion that appeared to suggest her failures in filing were excused by a lack of active participation by the petitioner parents, Ms. Thompson argued that

[t]alented attorneys can always make interesting arguments on behalf of their respective clients but if any portion was reversed and remanded I have serious concerns as to what would happen next and how long those types of matters would persist. These parents have not presented themselves at any time since the last months of the case and I suspect that was only because they were jailed. What would be the next step? Would the State be forced to retry the entire case but this time allege abandonment? It is not realistic and does not make economic sense to allow the filing of appeals on behalf of disinterested parties. Requiring a party to acknowledge their participation and acquiescence by the simple filing of a verification or the checking and signing of a box would resolve a great deal of unnecessary expenditures, delays in finalization, and work.

Ms. Thompson represented that the child was safe, well-cared for, and loved in a pre-adoptive foster home. Additionally, Ms. Thompson submitted an affidavit outlining

her concerns, anger, and frustration about DHHR. None of the identified concerns were related to the case of the child she was representing in the subject appeals to this Court.

Oral argument was held on the Rule to Show Cause on September 16, 2015.

On September 17, 2015, Ms. Thompson sent a letter to this Court in which she reiterated her stated justification for failing to file briefs. Ms. Thompson stated that it was not until after oral argument that she realized how this Court viewed her conduct in failing to timely file the briefs. Specifically, Ms. Thompson wrote:

At no time until yesterday morning did it occur to me that the events which led up to my appearance could create the impression that I was failing to do my homework and making excuses for it. It is amazing the damage one's sense of moral indignation can cause because as I left the building I could see nothing other than my missteps.

. . . .

In retrospect, it was just a missed deadline which *could possibly* have been quickly cured. But at the time, in my mind it became an inevitability and the only opportunity I would have to talk about very serious problems that were occurring.

She also indicated that she meant no disrespect to the Court or staff and had just dug her heels in on not responding. Ms. Thompson stated: "Once I realized how things had been interpreted, it became an out of body experience."

Ms. Thompson's response briefs as guardian ad litem were ordered filed in both appeals, thereby making the cases ripe for decision. On September 30, 2015, this Court entered Memorandum Decisions affirming the Mingo County Circuit Court's Order terminating the parental, custodial, and guardianship rights of the child's parents.

Additionally, on September 30, 2015, this Court issued a Memorandum Decision in regard to the rules to show cause against Ms. Thompson. *See In Re: A.N.*, Nos. 15-0182 & 15-0208, 2015 WL 5738019 (W. Va. Sept. 30, 2015) (memorandum decision). This Court held Ms. Thompson in contempt and ordered that she was denied eligibility for guardian ad litem and other court appointments until such time as the ODC investigated and any resulting disciplinary proceedings were concluded. *Id.* at *4. We reiterated the critical role of guardians ad litem in all stages of abuse and neglect proceedings. The Court observed the troubling lack of concern Ms. Thompson displayed for the individual infant child she represented and the child's need for permanency. *Id.* at *4. Our Memorandum Decision noted that at no time during oral argument did Ms. Thompson take responsibility for her failure to file briefs which resulted in delaying the child's permanent placement for at least four months. *Id.* at *3. We noted that our referral to the ODC was not an expression of opinion as to whether disciplinary action should be initiated or how such proceedings should be resolved. *Id.* at *4.

As directed, the Clerk's Office sent this matter to the ODC on September 30, 2015. By letter dated October 2, 2015, the ODC opened and docketed a complaint and sent it to Ms. Thompson requesting a verified response. Ms. Thompson, by and through counsel, filed an Answer/Affidavit, and the matter proceeded to discovery and hearing.

In addition to the testimony of the staff assistant and staff lawyer in the Clerk's Office, the HPS also heard from a staff member with the Supreme Court Administrative Office who testified regarding the nature and high importance of abuse and neglect proceedings. Ms. Thompson's mother, the Honorable Miki Thompson, Judge of the Circuit Court of Mingo County, testified that, during the relevant time-frame, Ms. Thompson was under significant stress and strain due to the tragic death of her sister and due to attempting to act as counsel in a challenging wrongful death action arising from that death. Judge Thompson testified that the emotional strain was relieved when they were able to obtain counsel to undertake representation in the wrongful death action. According to Judge Thompson, her daughter understands her violations of the Rules and is unlikely to make the same mistakes again.

Marcia Rumora, an attorney practicing in Mingo County, testified regarding her work experiences with Ms. Thompson. She characterized Ms. Thompson as being "very sharp," "professional," and a "strong advocate." Ms. Rumora was "shocked" to learn that

Ms. Thompson had disobeyed a court order because it was so far removed from her experiences with Ms. Thompson. She suggested the failure was due to office problems and perhaps the death of Ms. Thompson's sister, which resulted in Ms. Thompson caring for her niece and handling a wrongful death action—all without taking time to grieve. Ms. Rumora indicated that the public would not suffer in the event Ms. Thompson was permitted to continue to practice.

The foster parents of the child, who are the pre-adoptive parents, also testified regarding their disappointment in the delay due to the failure of Ms. Thompson to file her briefs. While they agreed that no actual harm was suffered by the child, they spoke about the emotions involved, the worry and fear delay causes, and the stress of having to continually deal with DHHR for all sorts of things such as approvals for physician visits and to go on family outings and vacations while waiting on a permanency decision.

As indicated above, Judge Cummings testified regarding his experiences with Ms. Thompson. Judge Cummings was familiar with the work of Ms. Thompson in her role as an attorney in abuse and neglect, juvenile, and criminal cases. He often appointed her to serve as guardian ad litem in abuse and neglect cases. He found Ms. Thompson to be competent in all cases in which she served as counsel. Judge Cummings testified that Ms. Thompson was a zealous and passionate advocate on behalf of infants and all her clients. He

further testified as to his role in the underlying case and his advice and directive to Ms. Thompson to file the briefs. With knowledge of the failure to file, Judge Cummings offered the opinion that Ms. Thompson was competent to practice law. Judge Cummings also stated that, outside the instance of her failure to file the briefs, he finds Ms. Thompson to be very professional and to exceed the standards of professionalism for much of the bar in Mingo County. He further indicated that he believed the error in judgment had “registered” with her and thought it unlikely she would repeat the conduct. Finally, Judge Cummings testified that Ms. Thompson had learned her lesson and that he “would not hesitate to use her again.”

B. Violations Found by the Hearing Panel Subcommittee

The ODC and Ms. Thompson presented the HPS with joint stipulations as to Ms. Thompson’s violations of the Rules of Professional Conduct. The HPS determined that the stipulated violations were supported by clear and convincing evidence and found the following violations:

- a. Because Respondent failed to timely file a brief or a summary response as a guardian ad litem for a child in the abuse and neglect case, she has violated Rules 1.1 [competence], 1.3 [diligence], and 8.4(d) [prejudice to the administration of justice] of the Rules of Professional Conduct.
- b. Because Respondent failed to zealously advocate for her client, the child, in the abuse and neglect proceedings and because her own actions caused delay and potential harm to the minor child by delaying permanency by several months, she has violated Rule 1.1 [competence], 1.2 [failure to take necessary action on minor’s behalf to achieve ultimate goal of

permanency], and 1.7 [conflict of interest] of the Rules of Professional Conduct.

c. Because Respondent failed to obey the March 13, 2015, and April 16, 2015 Orders from the Supreme Court to file a brief or summary response by May 20, 2015; failed to obey the May 27, 2015 Order from the Supreme Court to file a brief or summary response by June 1, 2015, and because Respondent's actions resulted in her being held in contempt by the highest court in our State, she has violated Rule 8.4(d) [prejudice to the administration of justice] and Rule 3.4(c) [knowingly disobeying an obligation under the rules of a tribunal] of the Rules of Professional Conduct.

C. Factors Considered by the Hearing Panel Subcommittee

The four factors that must be considered by the HPS in addressing lawyer disciplinary matters are set forth in Rule 3.16 of the West Virginia Rules of Lawyer Disciplinary Procedure. The first factor is whether the lawyer violated a duty owed to a client, to the legal system, or to the profession. The second factor is whether the lawyer acted intentionally, knowingly, or negligently. The third factor is the extent of the actual or potential injury. The fourth factor is the existence of any aggravating or mitigating factors.

Regarding the first factor, the HPS found that Ms. Thompson violated duties owed directly to her client by failing to timely communicate to the Court her position on behalf of the child. Additionally, the HPS found that Ms. Thompson violated duties owed to the legal system and to the profession. The HPS observed that the courts, attorneys, and parties involved were required to invest additional resources in the abuse and neglect

proceedings as a result of Ms. Thompson's failure to comply with her obligation to file briefs in the appeal.

As to the second factor, the HPS found that Ms. Thompson's conduct was knowing and intentional. The HPS found that the initial failure to file the briefs was an unintentional act resulting from law office management issues. However, the HPS concluded that, once Ms. Thompson became aware of the missed briefing deadlines, she intentionally and knowingly chose not to file the briefs based on a belief that "this would somehow help remedy the problems she perceived with Mingo County DHHR."

With respect to the third factor, regarding actual or potential injury, the HPS found that the delay in filing briefs resulted in potential injury due to delaying permanency of placement of a child. The HPS remarked: "While difficult to quantify precisely, there can be no doubt that Respondent contributed to a delay in permanency of at least several months."

As to the fourth factor, involving the presence or absence of aggravating or mitigating factors, the HPS found the presence of both. The HPS found Ms. Thompson's conduct constituted multiple offenses beginning with a lack of diligence which could have been easily cured. Instead, Ms. Thompson failed to correct her mistake and engaged in a

knowing and intentional failure to meet her duty and respond to Court orders. The HPS concluded that Ms. Thompson repeatedly refused to acknowledge her wrongful conduct by failing to comply with the many opportunities afforded by the Clerk's Office to correct her failure to file briefs. The HPS also cited the failure to follow Judge Cummings' instruction to file the briefs. Additionally, the HPS noted the refusal to acknowledge wrongful conduct by Ms. Thompson at oral argument before this Court. The "strongest aggravating factor" found by the HPS was the vulnerability of the infant client who had no means by which to protect himself from the conduct of Ms. Thompson.

As to mitigating factors, the HPS cited Ms. Thompson's lack of a prior disciplinary record and her inexperience in the practice of law. The HPS also considered that, to some extent, Ms. Thompson had already suffered penalty due to her inability to serve as a guardian ad litem during the pendency of the disciplinary proceedings which has had a significant impact on Ms. Thompson's practice. Finally, the HPS found that Ms. Thompson's involvement as counsel in her sister's wrongful death action was also a mitigating factor.

D. The Hearing Panel Subcommittee's Recommended Sanctions and the Objections of the Office of Disciplinary Counsel and of Ms. Thompson

To this Court, the HPS recommends that Ms. Thompson (1) be suspended from the practice of law for a period of three months; (2) attend an additional twelve hours of CLE

in the area of abuse and neglect and/or law office management prior to petitioning for reinstatement; (3) comply with Rule 3.28 of the Rules of Lawyer Disciplinary Procedure regarding the duties of suspended lawyers; (4) be required to petition for reinstatement pursuant to Rule 3.29 of the Rules of Lawyer Disciplinary Procedure; and (5) pay the costs of the disciplinary proceeding.

The ODC argues that the appropriate sanction is an eighteen month suspension. The argument of the ODC for a greater sanction is grounded in large part on the grave importance of abuse and neglect proceedings, the heightened scrutiny they are afforded, and the vital role of guardians ad litem in serving as the voice for vulnerable infants. Additionally, it is strenuously argued by the ODC that Ms. Thompson intentionally and knowingly held the case hostage, thereby delaying a permanency determination, because she was agitated about issues in other cases unrelated to her representation of the child in this case. Further, the ODC asserts that Ms. Thompson continued her delay and flagrant failure to abide by court orders and directives despite numerous opportunities provided by the Clerk's Office, and despite explicit directions from Judge Cummings to file the briefs. Additionally, the ODC considers Ms. Thompson to be unrepentant and incapable of understanding the significance of her actions.

Ms. Thompson objects to the recommended three month suspension and argues that she should be publicly reprimanded. In the alternative, she requests that this Court adopt the three month suspension recommended by the HPS. However, Ms. Thompson also requests that she receive credit for the time the Court has prohibited her from being appointed to abuse and neglect and criminal cases. Ms. Thompson contends that she believed she was acting in the best interest of her client and other children when she committed the serious error of judgment regarding how she chose to address deficiencies with CPS and DHHR in Mingo County. She also notes she was not motivated by dishonesty or self-interest. There was no immoral or illegal behavior. Ms. Thompson states that she has suffered public humiliation and shame due to the negative media attention directed at her in Mingo County once the contempt order became public. She claims she has suffered a devastating blow to her practice and been shamed by her colleagues. Ms. Thompson states she is remorseful and will carry the consequences of her wrongful and misguided behavior for the rest of her life. She further indicates she has accepted responsibility for her conduct as demonstrated by her cooperation with the ODC in stipulating to relevant facts and agreeing to violations of the Rules of Professional Conduct.

II.

STANDARD OF REVIEW

The standard of review in lawyer disciplinary matters is as follows:

A *de novo* standard applies to a review of the adjudicatory record made before the [Lawyer Disciplinary Board] as to questions of law, questions of application of the law to the facts, and questions of appropriate sanctions; this Court gives respectful consideration to the [Board's] recommendations while ultimately exercising its own independent judgment. On the other hand, substantial deference is given to the [Board's] findings of fact, unless such findings are not supported by reliable, probative, and substantial evidence on the whole record.

Syl. pt. 3, *Committee on Legal Ethics v. McCorkle*, 192 W. Va. 286, 452 S.E.2d 377 (1994).

Rule 3.7 of the West Virginia Rules of Lawyer Disciplinary Procedure provides: “[i]n order to recommend the imposition of discipline of any lawyer, the allegations of the formal charge must be proved by clear and convincing evidence.”

Furthermore, while we respectfully consider the HPS’s recommendations, it is well-settled that “[t]his Court is the final arbiter of legal ethics problems 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). Guided by these principles, we evaluate this disciplinary action.

III.

DISCUSSION

Ms. Thompson stipulated to violations of the Rules of Professional Conduct including two violations of Rule 1.1¹ (competence) and Rule 8.4(d)² (prejudice to the administration of justice), and to violations of Rule 1.3³ (diligence), 1.2⁴ (failure to take necessary action on minor's behalf to achieve goal of permanency), 1.7⁵ (conflict of interest), and 3.4(c)⁶ (knowingly disobeying an obligation under the rules of a tribunal). The HPS found that there was clear and convincing evidence of the stipulated violations. Likewise, our review of the record compels the conclusion that clear and convincing evidence

¹Rule 1.1 provides “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

²Rule 8.4(d) provides “[i]t is professional misconduct for a lawyer to: . . . engage in conduct that is prejudicial to the administration of justice; . . .”

³Rule 1.3 provides “[a] lawyer shall act with reasonable diligence and promptness in representing a client.”

⁴Rule 1.2, in part, provides “[a] lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. . . .”

⁵Rule 1.7, in part, provides “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. . . .”

⁶Rule 3.4(c) provides “[a] lawyer shall not: . . . knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; . . .”

established Ms. Thompson's violation of the Rules as stipulated to and as determined by the HPS.

We now turn our attention from the issue of the HPS findings to the question of the appropriate sanctions to be imposed on Ms. Thompson. The various permissible sanctions for violations of the Rules of Professional Conduct are set forth in Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, which provides:

A Hearing Panel Subcommittee may recommend or the Supreme Court of Appeals may impose any one or more of the following sanctions for a violation of the Rules of Professional Conduct . . . : (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. When a sanction is imposed, the Hearing Panel Subcommittee or the Court shall order the lawyer to reimburse the Lawyer Disciplinary Board for the costs of the disciplinary proceeding unless the panel or the Court finds the reimbursement will pose an undue hardship on the lawyer. Willful failure to reimburse the Board may be punished as contempt of the Court.

In devising suitable sanctions for attorney misconduct, this Court has recognized that “[a]ttorney disciplinary proceedings are not designed solely to punish the attorney, but rather to protect the public, to reassure it as to the reliability and integrity of attorneys and to safeguard its interest in the administration of justice.” *Lawyer Disciplinary Bd. v. Taylor*, 192 W. Va. 139, 144, 451 S.E.2d 440, 445 (1994). We are also mindful of the

role of deterrence in disciplinary sanctions as set forth in this Court's holding in Syllabus point 3 of *Committee on Legal Ethics v. Walker*, 178 W. Va. 150, 358 S.E.2d 234 (1987):

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.

With these principles in mind, we proceed to consider the four factors to be addressed when imposing sanctions. As this Court has previously recognized,

Rule 3.16 of the West Virginia Rules of Lawyer Disciplinary Procedure enumerates factors to be considered in imposing sanctions and provides as follows: "In imposing a sanction after a finding of lawyer misconduct, unless otherwise provided in these rules, the Court or Board shall consider the following factors: (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."

Syl. pt. 4, *Office of Lawyer Disciplinary Counsel v. Jordan*, 204 W. Va. 495, 513 S.E.2d 722 (1998).

After a thorough review of the record in this case, we agree with the analysis of the HPS as to the first three factors to be evaluated when imposing sanctions. Specifically, as to the first factor, Ms. Thompson failed in her obligation to protect the best interests of her

infant client when she refused to file responses in the appeals of the mother and the father in the abuse and neglect proceedings despite repeated requests, instruction, and orders. Rule 11(h) of the West Virginia Rules of Appellate Procedure addresses the responsibilities of guardians ad litem: “The guardian ad litem for any minor child involved in an abuse and neglect appeal must file a brief—or a summary response in an appropriate case” Ms. Thompson further violated the duties she owed to the legal system and to the profession when she failed to represent her infant client’s interests, choosing instead to hold the child’s case hostage in a grossly misplaced attempt at advancing her views regarding the perceived failures of DHHR in Mingo County. The delay resulting from Ms. Thompson’s blatant refusal to file briefs caused the additional expenditure of time and resources for the parties, other attorneys, the Circuit Court of Mingo County, and this Court.

As to the second factor, we agree with the HPS that Ms. Thompson’s initial failure to file the required briefs was unintentional. However, once the Clerk’s Office successfully communicated with Ms. Thompson on June 8, 2015, the conduct of Ms. Thompson transformed to that of a knowing and intentional failure to discharge her duty to the child, the legal system, and the profession in her unreasonably misguided quest to challenge DHHR practices in Mingo County unrelated to the child involved in the instant proceeding.

We also agree with the HPS that the injury and potential for injury in this case is clear. A hallmark of child abuse and neglect proceedings is that they are afforded the highest priority by our courts and must be resolved as expeditiously as possible in order to protect the child's development, stability, security, and well-being. *See, e.g.*, Syl. pt. 4, *In Re Emily*, 208 W. Va. 325, 540 S.E.2d 542 (2000); Syl. pt. 3, *In re Jonathan G.*, 198 W. Va. 716, 482 S.E.2d 893 (1996). Ms. Thompson's conduct caused injury by delaying the appellate process and thereby prolonging the permanency determination.

We finally examine the presence of both aggravating and mitigating factors in order to ascertain the proper sanction to be imposed. As we held in Syllabus point 2 of *Lawyer Disciplinary Board v. Scott*, 213 W. Va. 209, 579 S.E.2d 550 (2003), “[m]itigating factors in a lawyer disciplinary proceeding are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.” We further held in Syllabus point 3 of *Scott*,

[m]itigating 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.

Id. Conversely, “[a]ggravating factors in a lawyer disciplinary proceeding are any considerations or factors that may justify an increase in the degree of discipline to be imposed.” Syl. pt. 4, *id.*

We first consider mitigating factors. The HPS found three mitigating factors as stipulated by the ODC and Ms. Thompson: (1) absence of a prior disciplinary record, (2) inexperience in the practice of law, and (3) imposition of other penalties in the form of her ineligibility for appointed work. Additionally, the HPS found Ms. Thompson’s involvement as counsel in the wrongful death action regarding her sister affected her judgment during the relevant time-frame. We agree with the findings of the HPS as to mitigating factors. We also observe that the record establishes that the preclusion from appointed criminal and abuse and neglect proceedings over the course of the last eighteen months has affected Ms. Thompson’s practice. Appointed work constituted a large portion of Ms. Thompson’s solo practice in a rural part of the State. As a consequence of the embargo on appointed work, Ms. Thompson’s revenues are down some ninety percent, which resulted in her moving to less satisfactory office space and the financial inability to employ a secretary. In addition to the mitigating factors found by the HPS, we also find the absence of a dishonest or selfish motive. Although gravely misguided in her approach, Ms. Thompson’s testimony demonstrates that her failure to represent the child grew out of frustrations related to systemic

concerns with DHHR that she believed affected all children involved in abuse and neglect proceedings in Mingo County.

In addition to the findings of the HPS, we further find that Ms. Thompson has demonstrated remorse. During the period of refusal to file briefs, Ms. Thompson believed the child was safe and secure with good and loving foster parents who sought adoption of the child such that any delay she caused would not result in harm. Ms. Thompson states that she now understands the concerns of the foster parents regarding the delay and lack of permanency determination. Ms. Thompson stated she realized what she had done was wrong, recognized her errors in judgment, meant no disrespect to the authority of the courts or court staff, and candidly acknowledged it took a “lot of stepping back to understand” her failures and violations of the Rules. Finally, as to mitigating factors, we find that by working toward stipulations of fact, violations, and factors considered in terms of sanctions, Ms. Thompson demonstrated a cooperative attitude toward the proceedings.

We now turn to consideration of aggravating factors. The HPS concluded there were aggravating factors because Ms. Thompson’s wrongful conduct constituted multiple offenses which she repeatedly refused to acknowledge despite the many opportunities for correction provided by the Clerk’s Office and the directions of Judge Cummings. Additionally, the HPS found the strongest aggravating factor was the vulnerability of the

infant client. We agree with the conclusions of the HPS. We find that, once again, we must stress that abuse and neglect proceedings are afforded the utmost priority on the dockets of circuit courts and this Court. We have repeatedly held that abuse and neglect matters must be resolved fairly, expediently, and efficiently so as to safeguard the well-being of children. *See, e.g.,* Syl. pt. 4, *In Re Emily*, 208 W. Va. 325, 540 S.E.2d 542 (2000); Syl. pts. 1 & 5, *In re Carlita B.*, 185 W. Va. 613, 408 S.E.2d 365 (1991). Ms. Thompson lost sight of these principles and thereby failed in her duties to the vulnerable child she was appointed to represent. Instead, she used the child as a vehicle to advance her quest regarding perceived systemic failures of DHHR.

In assessing the appropriate sanction to be imposed, we examine Ms. Thompson's conduct in light of both mitigating and aggravating factors. In so doing, we note that in *Lawyer Disciplinary Board v. Conner*, 234 W. Va. 648, 769 S.E.2d 25 (2015), we fashioned a ninety-day suspension after finding the thirty-day suspension recommended by the HPS was "too lenient for behavior that has become a clear pattern of wrongdoing." *Id.* at 657, 769 S.E.2d at 34. The behavior in *Conner* included multiple failures to meet deadlines in criminal appeals, failures to communicate with clients, failure to keep clients informed, failure to appear before this Court at a rule to show cause hearing, failure to return the unearned portion of attorney fees after discharge, failure to place retainer fees in a client

trust account, and failure to file a response brief with this Court in connection with disciplinary proceedings. The conduct at issue in *Conner* was determined to be negligent.

It is recognized in *Lawyer Disciplinary Board v. Sturm*, 237 W. Va. 115, 785 S.E.2d 821 (2016), that this Court found the recommended sanction of reprimand to be too lenient. Instead, we imposed, in part, a ninety-day suspension from the practice of law. In *Sturm*, the conduct consisted of neglecting to file a habeas corpus petition, failing to contact the incarcerated client, neglecting to seek the client's consent to accept compensation for representation from a third party, failing to maintain a normal attorney-client relationship, failing to deposit the retainer fee in the client trust account, and disregarding the obligation to provide a refund of the unearned portion of the retainer fee. Additionally, the conduct in *Sturm* involved ignoring the duty to file an appeal in a criminal case after being court-appointed to do so, failing to communicate with the client, and failing timely to withdraw or attempt to withdraw from representation. There was also a history of similar prior conduct that had resulted in an admonishment from the Investigative Panel of the Lawyer Disciplinary Board. We expressed our concern for the repetitive conduct and propensity to ignore requests from the ODC and this Court. In imposing the ninety-day suspension of the practice of law, we also indicated our heightened concern regarding the large volume of court-appointed cases handled by the lawyer. The conduct of the lawyer in *Sturm* was determined to be negligent.

Ms. Thompson argues that her conduct is analogous to the conduct at issue in *Lawyer Disciplinary Board v. Grindo*, 231 W. Va. 365, 745 S.E.2d 256 (2013), wherein we imposed a sanction of public reprimand. In *Grindo*, the lawyer failed to timely perfect appeals in two matters pending before this Court, including one involving the representation of a father in an abuse and neglect proceeding. In *Grindo*, there were findings of a significant number of mitigating factors including institution of several significant remedial measures in the law office management and practice. Additionally, there were serious medical issues involving the lawyer's son that dominated the time and attention of the lawyer during the relevant time period. The conduct was determined to be a knowing and intentional violation of duties owed to his clients and the legal system.

The ODC argues that *Grindo* is distinguishable. We agree and find the conduct at issue in *Grindo* to be distinguishable, in part, due to the nature of the extensive remedial acts voluntarily undertaken by the lawyer. We conclude that, although there is a mix of both negligent and intentional conduct in the instant case, the violations and conduct of Ms. Thompson are more akin to that of the lawyers in *Conner* and *Sturm*. We are influenced by the imposition of ninety-day suspensions in those cases.

In deciding the sanction to be imposed, we consider that the testimony of Ms. Thompson regarding her thoughts and actions during the period of refusal to file briefs,

despite the entreaties of this Court and Judge Cummings, is confusing at best. As the guardian ad litem, Ms. Thompson agreed with the position of the DHHR as to termination of parental rights and ultimately filed briefs with this Court supporting termination. Nevertheless, before the HPS, Ms. Thompson testified that she did not agree with the DHHR's allegation that the mother was unfit stating, "it was an insane case from the start." She testified that the proceedings were unfair because there was not "enough" of a complaint and the child was deprived of his mother. She stated her belief that, at the time of the appellate process, she was "standing here shouting, going, hey, this isn't right, something's not right." And, yet, Ms. Thompson conceded she placed none of her concerns on the record. Ms. Thompson further testified that, after the appeals came to her attention in June 2015, she started realizing that the systemic concerns she had about DHHR also impacted this case. She understood that the mother "would've had more of a chance had something else happened, I just—I was crazy at the time. I was dug in." The testimony seems to be directed at the notion that DHHR handles things in such a way that biological parents simply give up and disappear, which makes termination an easy option. She suggests that the mother of the child was affected by a caseworker turning her in on a probation violation, which resulted in jail time. Additionally, Ms. Thompson suggested that the mother was wrongly subjected to a joint visitation with the father who had physically abused her because DHHR did not have time to set up two visitations. Ms. Thompson was critical of gaps in time where there

was no contact with the mother and no effort was made to determine the reason for the lack of contact. Instead, it was “[j]ust another mom that’s gone.”⁷

It took multiple attempts by HPS members to get answers to the question of whether, at the time she ultimately filed her briefs, she believed her recommendation supporting termination was in the best interest of the child. The answer was that any “hopes” she had for the mother were “speculative”⁸ because the mother had a lot of issues. Ms. Thompson testified she started “second-guessing everything” and believed things were “screwed up.” Although she did not change her recommendation supporting termination, her thinking was to let this Court know that things were “messed up.” Plainly, that reasoning was devoid of logic. The thinking makes no sense, especially when considered in light of her complaint to this Court that the parents were “disinterested” and her suggestion that those who file appeals in abuse and neglect cases should be required to show active and willing

⁷We note that none of Ms. Thompson’s concerns are borne out by the record established in the abuse and neglect proceedings regarding the mother or father of the child. Rather, the multiple factors supporting the terminations of parental rights are set forth in this Court’s memorandum decisions. There, we discuss, in some detail, serious safety and habitability concerns, probation violations, family violence, signs of drug use, and failures to follow through with rehabilitation services. *See In re A.N.*, No. 15-0185, 2015 WL 5738010 (W. Va. Sept. 30, 2015) (memorandum decision); *In re A.N.*, No. 15-0208, 2015 WL 9693898 (W. Va. Sept. 30, 2015) (memorandum decision).

⁸We have held that “courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened. . . .” Syl. pt. 1, in part, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980).

participation by the petitioners. We are confounded inasmuch as her briefs to this Court raised no issues regarding DHHR, or any other matter, with respect to the child she was charged to represent.

Perhaps Ms. Thompson intended to orally communicate how “messed up” things were to this Court on September 2, 2015. However, that did not occur because she did not appear. We are troubled by Ms. Thompson’s testimony that, absent an emergency situation and schedule conflict, her intent was to simply show up before this Court on September 2, 2015, at the rule to show cause hearing, without filing the required briefs so that she could address her perceived systemic concerns. Apparently, the schedule conflict prompted Ms. Thompson to consider that others were telling her to file her briefs, “and you’re stupid for trying this and just file your answer, so I did.” Accordingly, she filed the briefs on September 1, 2015, representing that she supported the termination of parental rights.

We adopt the HPS recommendation of a sanction consisting, in part, of a three month suspension from the practice of law. In adopting the recommended three month suspension, we give considerable deference to the testimony of Judge Cummings who has had an opportunity to directly observe Ms. Thompson’s conduct and professionalism in appointed cases. We are also cognizant of the fact that the preclusion

from appointed cases since September 2015, as applied to a small solo practice in rural Mingo County, substantially reduced the ability of Ms. Thompson to practice law in the fashion she had developed. This Court is mindful of the important role of deterring unacceptable conduct when designing appropriate sanctions. We are all too aware of the increasing pattern of untimely, inadequate, and perfunctory filings, submissions, and representation of those lawyers appointed to the vital role of guardian ad litem in abuse and neglect proceedings. Lawyers with practices including representation of children and respondents in abuse and neglect proceedings should consider this opinion, the sanction of suspension, and the length of preclusion from appointment during the disciplinary process as a cautionary tale. We also adopt the recommendation of the HPS that Ms. Thompson complete an additional twelve hours of continuing legal education in the area of abuse and neglect and/or ethics and law office management. In light of the three month suspension, reinstatement shall be automatic pursuant to Rule 3.31 of the Rules of Lawyer Disciplinary Procedure. Additionally, Ms. Thompson shall pay the costs of the disciplinary proceedings in accordance with Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

IV.

CONCLUSION

For the foregoing reasons, we adopt, as moulded, the following sanctions of the Hearing Panel Subcommittee: (1) that Ms. Thompson's law license be suspended for a period of three months, and Ms. Thompson is directed to abide by the duties imposed pursuant to Rule 3.28 of the Rules of Lawyer Disciplinary Procedure; (2) that Ms. Thompson complete an additional twelve hours of continuing legal education in the area of child abuse and neglect proceedings and/or in the area of ethics or law office management; (3) that Ms. Thompson pay the costs and expenses incurred by the ODC in the prosecution of this proceeding prior to her reinstatement to the practice of law; and (4) that reinstatement shall be automatic pursuant to Rule 3.31 of the Rules of Lawyer Disciplinary Procedure.

Law License Suspended and other Sanctions.