IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Re: Leah Perry Macia, a member of
The West Virginia State Bar

Bar No.: 7742
Supreme Court No.: 20-0908
I.D. No.: 19-03-416

REPORT OF THE HEARING PANEL SUBCOMMITTEE

I. PROCEDURAL HISTORY

Formal charges were filed against Leah Perry Macia (hereinafter "Respondent") with the Clerk of the Supreme Court of Appeals (hereinafter "Supreme Court") on or about November 18, 2020 and served upon Respondent via certified mail on November 23, 2020. Chief Disciplinary Counsel filed her mandatory discovery on or about December 15, 2020. Respondent's answer to the Statement of Charges was due to be filed on or before December 28, 2020. Respondent's answer to the Statement of Charges was received on or about January 8, 2021, after receiving a short extension of time.

Thereafter, this matter proceeded to hearing in Charleston, West Virginia, on May 25, 2021. The Hearing Panel Subcommittee (hereinafter "HPS") was comprised of Nicole A. Cofer, Esquire, Chairperson, Suzanne Williams-McAuliffe, Esquire, and Rachel Scudiere, Layperson. Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, appeared on behalf of the Office of Lawyer Disciplinary Counsel (hereinafter "ODC"). Respondent appeared by and through counsel, Jeffrey Foster, Esquire virtually. The HPS heard testimony from Respondent. In addition, ODC Exhibits 1-10, Respondent's Exhibits 1-3, and the joint stipulations of facts were admitted into evidence.

Based upon the evidence and the record, the HPS of the Lawyer Disciplinary Board hereby makes the following Findings of Fact, Conclusions of Law and Recommended Sanctions regarding the final disposition of this matter:

II. STIPULATED ADMISSIONS OF FACT

Leah Perry Macia (hereinafter "Respondent") is a lawyer who practices in Charleston, West Virginia. Respondent was admitted to The West Virginia State Bar on October 13, 1998, after successful passage of the Bar Exam. As such, she is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

Count I
Complaint of the Office of Disciplinary Counsel
I.D. No. 19-03-416

1. This complaint was opened after receiving an order from the Circuit Court of Kanawha County, West Virginia holding Respondent in direct criminal contempt of court for her actions in a criminal matter.

2. Respondent, who is employed by the Kanawha County Public Defender's Office, was appointed by the Circuit Court of Kanawha County, West Virginia to represent Charles W. McClanahan in the criminal action case styled State of West Virginia v. Charles W. McClanahan, Case No. 19-F-292, in the Circuit Court of Kanawha County, West Virginia.

3. On or about July 31, 2019, Respondent and her client appeared for the purpose of a sentencing hearing pursuant to her client's acceptance of a plea to felony burglary.

4. As part of the plea, the State recommended the Court suspend her client's sentence and impose a period of probation.

5. Respondent also requested the Court show her client leniency and sentence her client to probation so that he could enter a treatment program. To support this argument, Respondent affirmatively stated that if the Court granted her client probation he could immediately report to a long-term, residential treatment facility. Specifically, Respondent stated:

> ... He would go–he is– if the Court would allow it, if he is sentenced to probation, he does have a place waiting for him at Prestera. He would go to Prestera Riverside today, then he would to PARC East, and he would – until a bed is open at Harbor House, then he would be admitted to a 28 day inpatient program followed thereby – thereafter by a three to six month inpatient program.

6. The Court during sentencing expressed concern about the client's criminal record, but stated he believed the defendant had a fairly significant drug problem. When the Court attempted to clarify the proposed treatment plan, the following exchange occurred between Respondent and Court:

THE COURT: And I actually couldn't follow where all he's going and when he's going, by why don't you outline that for me one more time so I can think about that again?

RESPONDENT: He has a place waiting for him at Prestera, the Riverside facility. And that's where that he would go for intake. Then he would go from there to the PARC East Prestera.

THE COURT: And is there a bed available?

(A Private conference was had between the defendant and defense counsel.)

RESPONDENT: I'm sorry, I got that reversed, your Honor. Sorry. PARC East is where he would go for intake, and then he would be housed at Riverside, impatient for 28-day impatient.

THE COURT: And is that a guaranteed bed?

RESPONDENT: I'm sorry?

THE COURT: Is that a guaranteed bed?

RESPONDENT: Yes, it is, your Honor.

THE COURT: For the entire six or seven months?

RESPONDENT: Yes. Upon completion of the "28," yeah.

THE COURT: The bed is guaranteed?

RESPONDENT: Yeah.

7. The Court sentenced Respondent's client to prison for a term of 1-15 years. The sentence was suspended, and he was placed on probation for a period five years with the condition that he enroll in the drug rehabilitation program that Respondent described for a period of seven (7) months and, upon release he would be placed on home confinement.

8. Following the sentencing hearing, the Court was advised by a probation officer that no placement was available for the criminal defendant at Prestera Center. The probation officer stated he contacted the Prestera Center and was advised that no referral had been made on Respondent's client's behalf.

9. The Court subsequently held another hearing on or about August 1, 2019, wherein Respondent was advised of the information provided by the probation officer. The following exchange occurred:

RESPONDENT: Well, your Honor, I- it is correct that they [Prestera] don't have any materials from me because I'm not the one, nor is the Kanawha County Defender's Office, the one who contacted Prestera about him in this instance. It was, it was done through his mother. I think I may have contacted them at some point, but not - anyway, it was his mother and - who con- who initiated the process. I called yesterday before the hearing to confirm, and I was told yes, he was and he was - they had a place for him. I-

THE COURT: Well, who did you speak to , because I need to, to deal with them as well.

RESPONDENT: I do not know who it was I spoke to initially, because the person I asked for - I asked to speak to Joyce, who is - I can't - I'm sorry, I can't remember her name right now - who is our - the contact I'm used to dealing with her, and I've never had any miscommunication with her; and if I call her, the person has a spot. I called for her. That's who I thought I was talking to it turned - I learned subsequently that she isn't there anymore, and I don't know who it that I ended up speaking to yesterday morning.

10. The Court then questioned the criminal defendant who admitted under oath that he didn't tell Respondent that a treatment placement was guaranteed. The Court found that the criminal defendant misled the Court by failing to correct the statements about the

immediacy of the treatment placement. The Court found the client in breach and vacated the earlier order and sentenced the client to 1-15 years in the penitentiary.

11. The Court entered a rule to show cause against Respondent ordering her "to show cause regarding why she could not be held in contempt of Court" regarding the misrepresentations made during the July 31, 2019, hearing.

12. A rule to show cause hearing was held on August 16, 2019. Respondent appeared, in person, and with counsel.

13. The State called Margaret Welch and Storm Smith, two administrative employees from Presetera, who were answering phones at PARC East on July 31, 2019, and both testified that neither recalled anyone calling and asking for "Joyce"

14. Ms. Smith further testified that Respondent came to PARC East on July 31, 2019 and inquired if her client had a bed. Ms. Smith testified that she phoned Riverside and informed Respondent there was no bed for her client.

15. The State then called Allycia Stennet, the clinical supervisor at Prestera, who testified that on July 31, 2019, she received a call from Probation about a referral for Respondent's client. She confirmed in writing to probation that she verified no such referral had been made. She further testified that a referral was made on August 1, 2019, and the defendant had been accepted in to a 28 day program but clarified that long term placement was not guranteed. She also testified that a woman named "Joyce" had previously worked at PARC East a receptionist but had left the employ about a month and a half prior.

16. The State called Jostin Holmes, the residential supervisor at Prestera's PARC East, who testified that after searching all the referrals for the different residential sites, that prior to July 31, 2019, there had been no referral made for Respondent's client. He further testified

that the defendant's mother contacted Riverside on July 31, but the staff advised the mother he would have to go through the referral process. Mr. Holmes testified that no referral was generated, and no placement of the defendant was guaranteed on that date but testified the following day a referral was made, and placement was secured at Riverside's 28 day program.

17. Respondent also testified at the rule to show cause hearing. Respondent maintained that based upon the circumstances, including the representation of the defendant's mother and her client's representations, that she had a good faith belief her client had definite placement in the facility.

18. On August 29, 2019, and August 30, 2019, the State and Respondent, by and through counsel, filed their written pleadings.

19. The Court entered and Order on September 16, 2019, Respondent to be in direct criminal contempt of court in violation of West Virginia Code §61-5-26 and assessed her a fine of fifty dollars ($50.00).

20. The Court found Respondent's testimony was not credible. Additionally, the Court determined that even in Respondent's testimony was credible, that she failed to ensure the accuracy of the information even to a "minimal degree" before conveying the same to the Court.

21. The Court made the finding that "no placement existed" for Mr. McClanahan at the Prestera Center despite Respondent's repeated representations that her client had "guaranteed bed" at Prestera during the July 31, 2019 hearing.

22. The Court further found that Respondent's misrepresentations were "reckless and irresponsible" and "threatened to 'obstruct or interrupt the administration of justice,' as

[the defendant] was granted probation at the dispositional hearing and was permitted to enroll in treatment program at which he lacked a placement."

23. Respondent by and through counsel filed an appeal to the Supreme Court of Appeals on or about October 16, 2019.

24. The Supreme Court of Appeals issued a Memorandum Decision on or about December 7, 2020 and affirmed the Circuit Court's decision. State of West Virginia v. Charles W. McClanahan, Jr., In re Criminal Contempt of Leah P. Macia, No. 19-0944 (12/7/20).

II. ADMITTED VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT

25. Respondent's statements to the Court on July 31, 2019, regarding the "guaranteed bed" and the nature of the treatment plan were false statements of fact. Respondent was made aware of the false nature of her statements to the tribunal on the same date when she was advised, in person, by the PARC East staff person that no bed was available for her client. Respondent did not inform the Court of the lack of immediate availability for treatment placement for her client. Because Respondent made a false statement of fact to the Court and failed to take any remedial measures to correct the false statement of material fact, she admits that she has violated Rule 3.3(a)(1) of the Rules of Professional Conduct, which provides:

Rule 3.3(a)(1) Candor Toward the Tribunal

> (a) A lawyer shall not knowingly[1]:
> make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

---

[1] **Terminology Rule 1(f)** "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

26. Because the Court determined that Respondent's false statements to the Court and her subsequent failures to take remedial measures to correct the same threatened to obstruct or interrupt the administration of justice, Respondent was found in direct criminal contempt of court in violation of West Virginia Code §61-5-26[2] and as such she admits that she has violated Rules 8.4(b) and 8.4(d) of the Rules of Professional Conduct, which provide as follows:

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects
(d) engage in conduct that is prejudicial to the administration of justice

---

[2] **§61-5-26. Contempt of court; what constitutes contempt; jury trial; presence of defendant.**

The courts and the judges thereof may issue attachment for contempt and punish them summarily only in the following cases: (a) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice; (b) violence or threats of violence to a judge or officer of the court, or to a juror, witness, or party going to, attending or returning from the court, for or in respect of any act or proceeding had, or to be had, in such court; (c) misbehavior of an officer of the court, in his official character; (d) disobedience to or resistance of any officer of the court, juror, witness, or other person, to any lawful process, judgment, decree or order of the said court. No court shall, without a jury, for any such contempt as is mentioned in subdivision (a) of this section, impose a fine exceeding $50, or imprison more than ten days. But in any such case the court may impanel a jury (without an indictment or any formal pleading) to ascertain the fine or imprisonment proper to be inflicted, and may give judgment according to the verdict. No court shall impose a fine for contempt, unless the defendant be present in court, or shall have been served with a rule of the court to show cause, on some certain day, and shall have failed to appear and show cause.

III. STIPULATION AS TO RULE 3.16 ANALYSIS

27. Rule 3.16 of the Rules of Lawyer Disciplinary Procedure states when imposing 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.

28. Lawyers owe a fundamental obligation of truth to the legal system. The evidence establishes by clear and convincing proof that Respondent has violated duties owed to the legal system and to the legal profession.

29. The Circuit Court specifically found that Respondent's statements were reckless and irresponsible. The Supreme Court in affirming the contempt conviction found that she acted intentionally.

30. Respondent's conduct was an imminent threat of interruption to the administration of justice and the potential harm was significant. The Court specifically found that her misconduct "threatened to 'obstruct or interrupt the administration of justice,' as the defendant was granted probation at the dispositional hearing and was permitted to enroll in treatment program at which he lacked a placement. While harm to the legal system and the legal profession resulting from Respondent's false statements to the Court by Respondent is difficult to ascertain by traditional methods, it is evident the misconduct resulted in the waste of judicial resources, the diminished confidence in the administration of justice, and damage to the public's confidence in lawyers.

31. Pursuant to 9.22 of the Standards for Imposing Lawyer Sanctions, the following factors should be considered as aggravating factors: 1. substantial experience in the practice of law; and 2. criminal contempt is criminal in nature, but because it has no statutory maximum sentence, it is not classified as a felony or a misdemeanor but is *sui generis*. The parties agree the conviction should not be equated to a felony but is more similarly aligned to a misdemeanor offense.

32. Pursuant to 9.32 of the Standards for Imposing Lawyer Sanctions, the following factors should be considered as mitigating factors: 1. absence of a prior disciplinary record; 2. acceptance of responsibility and cooperative attitude with ODC during disciplinary proceedings; 3. evidence of good character and reputation; 4. imposition of other penalties or sanctions; and 5. remorse.

IV. DISCUSSION

The Supreme 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). Factors to be considered in imposing appropriate sanctions are found in Rule 3.16 of the Rules of Lawyer Disciplinary Procedure. These factors consist of: (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors. *See also,* Syl. Pt. 4, Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d 722 (1998).

A. Respondent violated a duty owed to her client, the legal system and the public.

In determining the nature of the ethical duty violated, the standards assume that the most important ethical duties are those obligations which a lawyer owes to clients. Those include the duty of diligence and candor to the tribunal. In addition to duties owed to clients, lawyers also owe duties to the legal system. Lawyers are officers of the court and must abide by the rules of substance and procedure which shape the administration of justice. Lawyers must always operate within the bounds of the law and cannot engage in any improper conduct. The evidence in this case establishes by the clear and convincing standard that Respondent violated her duties owed to her client and the legal system. Further, Respondent has admitted that her conduct violated a duty owed to her client, the legal system and the public.

B. Respondent acted intentionally, knowingly, or negligently.

The most culpable mental state is that of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct, both without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that 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 acted knowingly in proffering to the Court that she had arranged for her client that she, in fact, had not made. The evidence in this case establishes by clear and convincing proof that Respondent knowingly misrepresented information to the Court to the detriment of her client.

C. **Actual and potential injury were present.**

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

Respondent's conduct was an imminent threat of interruption to the administration of justice and the potential harm was significant. The Court specifically found that her misconduct "threatened to 'obstruct or interrupt the administration of justice,' as the defendant was granted probation at the dispositional hearing and was permitted to enroll in treatment program at which he lacked a placement. While harm to the legal system and the legal profession resulting from Respondent's false statements to the Court by Respondent is difficult to ascertain by traditional methods, it is evident the misconduct resulted in the waste of judicial resources, the diminished confidence in the administration of justice, and damage to the public's confidence in lawyers.

D. The existence of a mitigating factor.

The Supreme Court has adopted mitigating factors in Lawyer Disciplinary Proceedings and stated that the 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)[1]. It should be clear that mitigating factors were not envisioned to insulate a violating lawyer

[1] 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

from discipline. The mitigating factors present in the instant case are (1) the good faith effort to rectify the consequences of her misconduct, (2) the Respondent's cooperative attitude toward the disciplinary proceedings, and (3) the Respondent's remorse for her actions and how they reflected on her as a lawyer and the profession. Additionally, Respondent agreed to the sanction recommended below with her stipulations, except that she agreed to a longer period of actual suspension than the HPS found adequate.[2]

V. RECOMMENDED SANCTIONS

1. "[T]he primary purpose of the ethics committee [ODC] is not punishment but rather the protection of the public and the reassurance of the public as to the reliability and integrity of attorneys." Office of Lawyer Disciplinary Counsel v. Albers, 214 W.Va. 11, 13 585 S.E.2d 11, 13 (2003) *citing* Committee on Legal Ethics of the West Virginia State Bar v. Ikner, 190 W.Va. 433, 436, 438 S.E.2d 613, 616 (1993) (internal citations omitted).
2. 6.12 of the ABA's Standards for Imposing Lawyer Sanctions provides "[s]uspension is generally appropriate when a lawyer knows that false statements are being submitted to the Court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding or causes an adverse or potentially adverse effect on the legal proceeding." The Annotation to 6.12 further notes that suspension is generally appropriate when a lawyer has not acted with intent to deceive the tribunal.[3]

---

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.

[2] Respondent agreed to serve ninety (90) days of actual suspension. *See* Stipulations Regarding Admissions of Fact, Admissions of Violations of the Rules of Professional Conduct and Stipulations of Recommended Sanction.

[3] The Standards note that disbarment is generally appropriate when a lawyer, with the intent to deceive the Court, makes a false statement to the Court and causes significant or potentially significant adverse effect on the legal

3. Respondent's law license should be suspended for a period of one (1) year.
4. Respondent will serve thirty (30) days of the one year of suspension.
5. Respondent will issue a written apology to the Circuit Court Judge for her misconduct.
6. At the conclusion of the thirty (30) days of suspension, assuming Respondent has satisfied all conditions to return to practice including the issuance of the written apology and the execution of all probation documents, Respondent will be subject to automatic reinstatement, and the remaining period of suspension will be held in abeyance while Respondent is on probation with supervised practice by an experienced lawyer for a period of one (1) year.
7. Any breach of the terms of probation, will result in the filing of a petition to the Supreme Court of Appeals.
8. Respondent will bear the costs of the disciplinary proceedings.

Nicole A. Cofer, Esq., Chairperson
Hearing Panel Subcommittee

Date: 9/30/2021

Suzanne Williams-McAuliffe

Suzanne Williams-McAuliffe, Esquire
Hearing Panel Subcommittee

Date: 10/1/2021

proceeding.

Rachel Scudiere

Rachel Scudiere, Lay Member
Hearing Panel Subcommittee

Date: 9/30/2021

CERTIFICATE OF SERVICE

This is to certify that I, **Rachael L. Fletcher Cipoletti**, Chief Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 1st day of October, 2021, served a true copy of the foregoing **"REPORT OF THE HEARING PANEL SUBCOMMITEE"** counsel for Respondent, Jeffrey A. Foster, by mailing the same via United States Mail, with sufficient postage, to the following address:

Jeffrey A. Foster, Esquire
Flaherty Sensabaugh Bonasso, PLLC
200 Capitol Street
Charleston, West Virginia 25301

Notice to Respondent: for the purpose of filing a consent or objection hereto, pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary Procedure, either party shall have thirty (30) days from today's date to file the same.

Rachael L. Fletcher Cipoletti