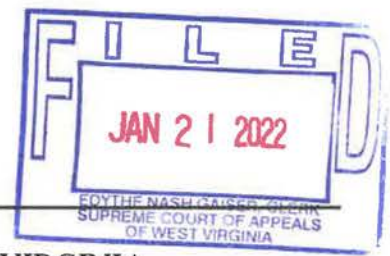


Docket No. ~~19-0944~~



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

LAWYER DISCIPLINARY BOARD,
Petitioner,

v.

No. 20-0908

Leah Perry Macia,
Respondent.

RESPONSE BRIEF OF PETITIONER, LEAH P. MACIA

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Rules

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Respondent, Leah P. Macia, by counsel, submits the following Response to the Brief of Petitioner, the Office of Disciplinary Counsel (“Petitioner”).

I. STATEMENT OF THE CASE

A. Nature of Proceedings

The aforementioned Complaint stems from Ms. Macia's representation of Charles W. McClanahan, Jr. Ms. Macia was appointed by the Circuit Court of Kanawha County, West Virginia, to provide legal representation to Mr. McClanahan in criminal action designated 19-F-292. Ms. Macia is a licensed attorney who is employed by the Kanawha County Public Defender's Office, more formally known as the Public Defender Corporation for the 13th Judicial Circuit of West Virginia, and has been so employed since November 2018.

During the course and scope of the appointed representation of Mr. McClanahan, Respondent appeared, together with Mr. McClanahan, before the Court on July 31, 2019, for the purpose of a sentencing following a plea of guilty by Mr. McClanahan to the felony offense of burglary. This Court is familiar with the facts that occurred during and subsequent to the hearing of July 31, 2019. *See State v. McClanahan*, No. 19-0944, 2020 WL 7231111, at *1 (W. Va. Dec. 7, 2020).

As stated therein, “Ms. Macia, an attorney licensed since 1998 in the State of West Virginia, appeared before The Honorable Louis H. “Duke” Bloom in the Circuit Court of Kanawha County on July 31, 2019, as defense counsel at a sentencing hearing for Mr. McClanahan, her client, after he pled guilty to the felony offense of burglary. Ms. Macia asked the circuit court to impose probation to allow Mr. McClanahan to receive inpatient treatment at Pretera Treatment Center (“Pretera”) to address his substance addiction. When pressed by Judge Bloom on the question of whether “a guaranteed bed” was reserved for Mr. McClanahan, Ms. Macia responded, “Yes, it is, your Honor.” Relying on Ms. Macia's representation, Judge Bloom suspended Mr. McClanahan's prison sentence and placed him on probation.

McClanahan, No. 19-0944, 2020 WL 7231111, at *1 (W. Va. Dec. 7, 2020). Ultimately, as noted by the *McClanahan* Court, a bed was not immediately available for Ms. Macia's client.

Due to these unfortunate circumstances, Ms. Macia was ultimately convicted of contempt. The conviction was upheld by the *McClanahan* Court, with Justices Workman and Jenkins dissenting. *See, generally, McClanahan, supra.*

Subsequent to the decision of the Court in *McClanahan*, the Office of Disciplinary Counsel ("ODC") filed formal charges against Ms. Macia in its Complaint No. 9-03-416 on November 18, 2020. Ms. Macia filed her Verified Response to the Charges on January 8, 2021, after receiving a short extension for the same. The Statement of Charges accuses Ms. Macia of a violation of Rule 3.3(a)(1) of the Rules of Professional Conduct. In addition, The Statement of Charges also accuse Ms. Macia of a violation of Rule 8.4(b) and 8.4(d) of the Rules of Professional Conduct.

In her Verified Response, Ms. Macia denied the charges, and further argued that the present case warranted consideration of mitigating factors. "Mitigating factors in a lawyer disciplinary proceeding are any considerations or factors that may justify a reduction in the degree of discipline to be imposed." *Lawyer Disciplinary Bd. v. Sidiropolis*, 241 W. Va. 777, 787, 828 S.E.2d 839, 849 (2019) (internal citations and quotations omitted). "Mitigating factors which may be considered in determining the appropriate sanction to be imposed against a lawyer for violating the Rules of Professional Conduct include:"

(1) absence of a prior disciplinary record; (2) absence of a dishonest or selfish motive; (3) personal or emotional problems; (4) timely good faith effort to make restitution or to rectify consequences of misconduct; (5) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (6) inexperience in the practice of law; (7) character or reputation; (8) physical or mental disability or impairment; (9) delay in disciplinary proceedings; (10) interim rehabilitation; (11) imposition of other penalties or sanctions; (12) remorse; and (13) remoteness of prior offenses.

Sidiropolis, 241 W. Va. 777, 787, 828 S.E.2d 839, 849.

Specifically, Ms. Macia had never been the subject of contempt proceedings before in her career, nor has she been the subject of any ethics complaints, violations, or disciplinary actions. Moreover, Ms. Macia denied that she intentionally or knowingly misled or made misrepresentations to the Circuit Court regarding Mr. McClanahan's "guaranteed bed" and placement in a treatment facility. Ms. Macia, in fact, did not knowingly make a false statement to the Circuit Court regarding Mr. McClanahan's purported placement at Pretera, and a review of the totality of the facts surrounding her statement support the same finding.

As stated above, immediately prior to the sentencing hearing on July 31, 2019, Ms. Macia spoke with Linda Workman in the courtroom and Ms. Workman confirmed the information that Mr. McClanahan had just told Respondent regarding the placement at Pretera. Ms. Workman advised Respondent that Pretera was definitely a "go." Thus, based upon the totality of the information she received from her client, Ms. Workman, and her telephone call to Pretera, Ms. Macia had the understanding and belief that Mr. McClanahan had a definite placement at Pretera. Given this background, Ms. Macia represented, in good faith, to the Circuit Court that Mr. McClanahan had a guaranteed bed at Pretera should he be granted probation. Ms. Macia's only motive was what she thought was the best interests of her client.

Again, Ms. Macia argued that she did not knowingly commit any acts that obstructed or interrupted the administration of justice, nor did she actually obstruct or interrupt the administration of justice. Ms. Macia acted, based upon her good faith belief, in what she believed was the best interests of her client. Mr. McClanahan was not released unsupervised. Immediately upon learning that Mr. McClanahan did not have a placement secured as Ms. Macia believed, she acted expeditiously to rectify the situation. Not only was one placement secured for Mr.

McClanahan, two were secured in case one of the placements fell through, at the latest, the very next day.

B. The Parties' Agreement

Notwithstanding the above arguments, Ms. Macia and the undersigned counsel are cognizant of the rule of law that states: “[w]here there has been a final criminal conviction, proof on the record of such conviction satisfies the Committee on Legal Ethics’ burden of proving an ethical violation arising from such conviction,” (*see, e.g., Syllabus Point 2, Committee on Legal Ethics v. Six*, 181 W.Va. 52, 380 S.E.2d 219 (1989)). Thus, given this background, the parties entered into Stipulations Regarding Admissions of Fact, Admissions and Violations of the Rules of Professional Conduct and Stipulation of Recommended Sanction (“Stipulations”). With respect to the recommended sanction, the parties agreed as follows:

1. Respondent’s law license should be suspended for a period of one (1) year.
2. Respondent will serve ninety (90) days of the one year of suspension.
3. Respondent will issue a written apology to the Circuit Court Judge for her misconduct
4. At the conclusion of the ninety (90) 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.
5. Any breach of the terms of probation, will result in the filing of a petition to the Supreme Court of Appeals.
6. Respondent will bear the costs of the disciplinary proceedings.

C. Decision of the Hearing Panel Subcommittee

A hearing was held on May 25, 2021, before a Hearing Panel Subcommittee (“Hearing Panel”). The Stipulations referenced above were presented to the Hearing Panel. On or around September 30, 2021, the Hearing Panel filed its Report with the Supreme Court. In that Report, the Hearing Panel recommended the following sanction:

1. That Respondent’s law license should be suspended for a period of one (1) year.
2. That Respondent will serve thirty (30) days of the one-year suspension.
3. That Respondent will issue a written apology to the circuit court judge for her misconduct.
4. That 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 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 year.
5. That any breach of the terms of probation result in the filing of a petition to the Supreme Court of Appeals.
6. That Respondent shall pay the costs incurred in this disciplinary proceeding.

The only difference between the recommended sanction contained in the Stipulation and that of the Report of the Hearing Board was that the Hearing Board recommended that the Respondent serve 30 days of the one year suspension instead of 90. Based on this discrepancy, the ODC objected to the Report of the Hearing Board, and initiated this proceeding.

II. SUMMARY OF ARGUMENT

The Hearing Board heard Ms. Macia’s testimony, and had before it the parties’ stipulations. In its Report, it determined that the appropriate sanction would include that Respondent serve 30 days of her one year suspension, instead of 90 days, as contained in the stipulation. While the

Supreme Court of Appeals 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 (*Law. Disciplinary Bd. v. Lusk*, 212 W. Va. 456, 460–61, 574 S.E.2d 788, 792–93 (2002)(internal citations and quotations omitted), the Supreme Court of Appeals “gives respectful consideration to the [Hearing] Board’s recommendation,”(*Law. Disciplinary Bd. v. McGraw*, 194 W. Va. 788, 789, 461 S.E.2d 850, 851 (1995) (internal citations and quotations omitted)). In this case, the Supreme Court of Appeals should give “respectful consideration” to the Hearing Board’s recommendation, including the provision at issue here, that she serve 30 days of her one year suspension.

III. STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rule 19 of the West Virginia Rules of Appellate Procedure, this Honorable Court set this matter for oral argument during the January 2022 term.

IV. ARGUMENT

A. STANDARD

The Supreme Court of Appeals has set the standard of review for lawyer disciplinary cases:

A de novo standard applies to a review of the adjudicatory record made before the Committee on Legal Ethics of the West Virginia State Bar currently, the Hearing Panel Subcommittee of 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 Committee’s recommendations while ultimately exercising its own independent judgment. On the other hand, substantial deference is given to the Committee's findings of fact, unless such findings are not supported by reliable, probative and substantial evidence on the whole record.

That standard of review is, of course, indicative of this Court’s ultimate authority with regard to legal ethics issues and the practice of law in West Virginia ...“ 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."

Law. Disciplinary Bd. v. Lusk, 212 W. Va. 456, 460–61, 574 S.E.2d 788, 792–93 (2002)(internal citations and quotations omitted).

B. The Recommended Sanction of the Hearing Panel is Appropriate and Owed Deference.

Here, the only issue that the parties' seem to be fighting over is whether Ms. Macia will serve 30 days of her suspension, or 90 days. Reviewing the circumstances surrounding this case as a whole, this is an entirely appropriate sanction.

Rule 3.16 of the West Virginia Rules of Lawyer Disciplinary Procedure enumerates factors to be considered in imposing sanctions. Specifically, "[i]n imposing a sanction after a finding of lawyer misconduct, unless otherwise provided in these rules, the West Virginia Supreme Court of Appeals or 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)(internal citations and quotations omitted).

Again, Respondent would reiterate that the only matter challenged here by the ODC is whether she should serve 30 or 90 days of her suspension. Every other item of the sanction recommended by the Hearing Board and contained in the parties' Stipulation is the same. The Hearing Board heard the stipulated facts; it also heard the admitted violation of the rules of ethics; it also had before it the parties' stipulation and recommended and agreed-to sanction. In addition, it had before it the Order of Contempt of Judge Bloom from the Circuit Court of Kanawha County,

West Virginia, as well as this Court's decision to uphold that conviction. Every transcript of the underlying hearings was available to the Hearing Board. Taking all of these factors into consideration, the Hearing Board recommended that Mr. Macia serve only 30 days of the one year suspension. Again, this is the only difference from the Stipulation presented by the parties at the hearing. Ms. Macia must still serve each and every other item of sanction contained therein.

Moreover, there is evidence of mitigating factors here. Specifically, Ms. Macia had never been the subject of contempt proceedings before in her career, nor has she been the subject of any ethics complaints, violations, or disciplinary actions. Moreover, Ms. Macia denied that she intentionally or knowingly misled or made misrepresentations to the Circuit Court regarding Mr. McClanahan's "guaranteed bed" and placement in a treatment facility. Ms. Macia, in fact, did not knowingly make a false statement to the Circuit Court regarding Mr. McClanahan's purported placement at Pretera, and a review of the totality of the facts surrounding her statement support the same finding.

As stated above, immediately prior to the sentencing hearing on July 31, 2019, Ms. Macia spoke with Linda Workman in the courtroom and Ms. Workman confirmed the information that Mr. McClanahan had just told Respondent regarding the placement at Pretera. Ms. Workman advised Respondent that Pretera was definitely a "go." Thus, based upon the totality of the information she received from her client, Ms. Workman, and her telephone call to Pretera, Ms. Macia had the understanding and belief that Mr. McClanahan had a definite placement at Pretera. Given this background, Ms. Macia represented, in good faith, to the Circuit Court that Mr. McClanahan had a guaranteed bed at Pretera should he be granted probation. Ms. Macia's only motive was what she thought was the best interests of her client.

Again, Ms. Macia argued that she did not knowingly commit any acts that obstructed or interrupted the administration of justice, nor did she actually obstruct or interrupt the administration of justice. Ms. Macia acted, based upon her good faith belief, in what she believed was the best interests of her client. Mr. McClanahan was not released unsupervised. Immediately upon learning that Mr. McClanahan did not have a placement secured as Ms. Macia believed, she acted expeditiously to rectify the situation. Not only was one placement secured for Mr. McClanahan, two were secured in case one of the placements fell through, at the latest, the very next day.

Thus, this Court should give “respectful consideration” to the Hearing Panel’s recommended sanction, specifically that she server 30 days of the one year suspension.

V. CONCLUSION

For the reasons set forth above, Respondent prays that objections of the Office of Disciplinary counsel be overruled, and the recommended sanction of the Hearing Panel Subcommittee be upheld.

Dated: January 18, 2022.

Respectfully submitted,



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CERTIFICATE OF SERVICE

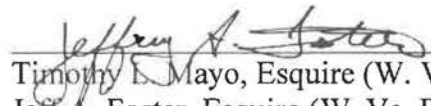
I, the undersigned, counsel for Leah P. Macia, do hereby certify that on the **18th** day of **January 2022**, I served the foregoing ***Response Brief of Petitioner, Leah P. Macia*** via United States postal mail to the following individuals:

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