

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

LAWYER DISCIPLINARY BOARD,

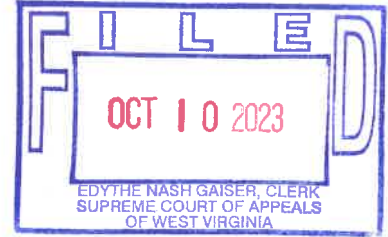
Petitioner,

vs.

No. 18-0363

PATRICK DOHENY, ESQUIRE

Respondent.



BRIEF OF THE LAWYER DISCIPLINARY BOARD

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

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I. STATEMENT OF THE CASE

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

On January 23, 2013, Respondent was convicted of (1) Aggravated Assault by Motor Vehicle while Driving Under the Influence, (2) Driving Under the Influence of Alcohol or Controlled Substance, (3) Driving Under the Influence of Alcohol, high rate of alcohol, (4) Driving Under the Influence of Alcohol or Controlled Substance, and (5) Failure to Keep Right. Respondent had also been charged, but was acquitted of, reckless driving. The convictions arose out of a motor vehicle accident that occurred on the night of October 5, 2011, wherein Respondent's vehicle crossed the center line of a roadway and collided with a motorcycle traveling in the oncoming direction. The operator of the motorcycle sustained serious bodily injuries. A civil action was also filed due to the accident, which resulted in a civil settlement.

As a result of his criminal conviction in Commonwealth of Pennsylvania v. Patrick J. Doheny, Jr., Criminal Docket No: CP-02-CR-0001734-2012, Respondent was sentenced on June 24, 2013, as follows: (1) placement into a county intermediate punishment program (IPP) for a period of eighteen (18) months which consisted of house arrest, work release, and the wearing of an ankle monitoring device; (2) probation for a period of four years supervised by the Allegheny County Adult Probation Office subject to the following conditions: (a) payment of restitution in the amount of \$1.00; (b) have no contact with victim; (c) perform 100 hours of community service; and (d) do not operate a motor vehicle unless and until driver's license is restored; (3) court-ordered drug and alcohol evaluation; (4) safe driving classes; and (5) payment of a \$500.00

fine. Respondent's punishment commenced on June 24, 2013, and his probation continued until June of 2017.¹

Respondent self-reported his conviction to ODC by letter dated February 13, 2013, and ODC opened a complaint identified as I.D. No. 13-01-081.² In addition to providing information on his criminal conviction, Respondent self-reported the Pennsylvania disciplinary action taken against him to ODC by letter dated January 10, 2017. Respondent attached to his letter the Private Reprimand, the Order accepting the Report and Recommendation of the Hearing Panel Committee, and the Report and Recommendation of the Hearing Panel Committee.

On April 24, 2018, the Office of Lawyer Disciplinary Counsel (hereinafter "ODC") filed a "Notice of Reciprocal Disciplinary Action Pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure." Paragraph 9 of that Notice advised Respondent that Disciplinary Counsel would request that the Hearing Panel Subcommittee (hereinafter "HPS") impose a similar, but not the same sanction as the Disciplinary Board of the Supreme Court of

¹ Respondent filed a direct appeal of his criminal conviction in or about January 2014, and the Superior Court of Pennsylvania affirmed Respondent's criminal convictions by Order entered on April 29, 2015. Respondent then filed a Petition for Allowance of an Appeal with the Supreme Court of Pennsylvania on the basis of newly discovered evidence obtained during his direct appeal. The Supreme Court of Pennsylvania denied Respondent's Allowance of an Appeal on February 8, 2016, and the matter became final on March 9, 2016. Respondent next filed a Petition for Post-Conviction Collateral Relief on February 8, 2017, wherein he sought reversal, in the form of acquittal or new trial, of his conviction. An evidentiary hearing was held on June 5, 2017, and by Order entered June 5, 2017, the Court of Common Pleas of Allegheny County dismissed his Petition for Post-Conviction Collateral Relief. Respondent filed a Notice of Appeal of the denial of his Petition for Post-Conviction Collateral Relief on June 9, 2017. On December 27, 2018, the Superior Court of Pennsylvania affirmed the denial of Respondent's Petition for Post-Conviction Collateral Relief. See, Commonwealth v. Doheny, No. 846 WDA 2017, 2018 WL 6803713 (Pa. Super. Ct. Dec. 27, 2018).

² On September 23, 2015, the Chair of the Investigative Panel of the West Virginia Lawyer Disciplinary Board issued a stay on I.D. No. 13-01-081 pending the resolution of Respondent's underlying criminal charges and Pennsylvania disciplinary proceedings. In Legal Ethics Committee v. Pence, 161 W.Va. 240, 253, 240 S.E.2d 668, 674 (1977), the Court found that Legal Ethics Committee (now known as the Lawyer Disciplinary Board) should not defer disciplinary proceedings where only a civil case is also pending involving substantially similar factual allegations but disciplinary proceedings should be deferred until there a termination of pending criminal litigation involving substantially similar factual allegations, provided that the respondent-attorney proceeds with reasonable dispatch to insure the prompt prosecution and conclusion of the pending litigation.

Pennsylvania because the West Virginia Rules of Lawyer Disciplinary Procedure do not provide for a private reprimand as a permissible sanction. In Paragraph 10 of that notice, in accordance with Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure, ODC advised Respondent of his right to challenge the validity of his Pennsylvania discipline, advised of his right to request a formal hearing and provide a complete copy of the record to the ODC within thirty (30) days.

Instead, on May 23, 2018, Respondent filed his "Motion to Dismiss Notice of Reciprocal Disciplinary Action for Lack of Jurisdiction and to Seal Record of Proceedings" with the Supreme Court of Appeals of West Virginia.

On June 4, 2018, Senior Lawyer Disciplinary Counsel filed "Office of Lawyer Disciplinary Counsel's Response to Respondent's 'Motion to Dismiss Notice of Reciprocal Disciplinary Action for Lack of Jurisdiction and to Seal Record of Proceedings'" with the Supreme Court of Appeals of West Virginia.

On October 4, 2018, the Supreme Court of Appeals of West Virginia issued an Order refusing Respondent's Motion to Dismiss and Motion to Seal.

After ODC filed a Motion for Reciprocal Discipline pursuant to Rule 3.20(a) of the Rules of Lawyer Disciplinary Procedure, on or about October 2, 2020, Respondent filed a "Response to [ODC's] Motion for Reciprocal Disciplinary and Request to Dismiss Notice of Reciprocal Disciplinary Action and to Seal Record of Proceedings" with the Supreme Court of Appeals of West Virginia.

ODC filed a "Response to 'Respondent's Response to [ODC's] Motion for Reciprocal Disciplinary and Request to Dismiss Notice of Reciprocal Disciplinary Action and to Seal Record of Proceedings'" and "Motion to File Out of Time" with the Supreme Court of Appeals on October 26, 2020.

By Order entered January 28, 2021, the Supreme Court of Appeals of West Virginia granted ODC's Motion to File a response out of time and refused the Motion to Dismiss and the Motion to Seal.

The HPS, comprised of Kelly D. Ambrose, Esquire, Chairperson; Henry W. Morrow, Jr., Esquire; Dr. K. Edward Grose, Laymember, subsequently set a Scheduling Order, including a hearing date in this matter but following a pre-hearing held by video conference, the HPS entered an "Order from Pre-Hearing Conference Held May 26, 2021," wherein the HPS determined that upon review of the record, the Scheduling Order was "improvidently awarded." The HPS also stated that pursuant to Rule 3.20, the HPS determined that an evidentiary hearing is not necessary. The HPS also found that a "threshold issue to be addressed in these proceedings is whether the HPS, and ... the West Virginia Supreme Court of Appeals, has subject matter jurisdiction of this matter based upon the uncontested record" The HPS requested that the parties submit briefs on the "sole issue of subject matter jurisdiction based upon the claim advanced by the Respondent that under Rules 3.20(b) and 3.20(c), that jurisdiction is only achieved when 'public discipline has been rendered in the foreign jurisdiction.'"

After briefs were submitted by ODC and Respondent, the HPS issued a Recommended Decision which was filed with the Supreme Court of Appeal on October 4, 2021. The HPS found that the "express language" of Rules 3.20(b) and 3.20(c) of the Rules of Lawyer Disciplinary Procedure "require that a lawyer be publicly disciplined in the foreign jurisdiction in order for proceedings to be instituted under Rule 3.20, RLDP. Inasmuch as Respondent's discipline was a private reprimand and not subject to public disclosure under Pennsylvania law, it is the opinion of the [HPS] that the Panel and the West Virginia Supreme Court of Appeals are without subject matter jurisdiction to hear the matter. Therefore, [the HPS] recommend[ed] that this action be

dismissed for lack of subject matter jurisdiction.” Furthermore, the HPS recommended that Respondent’s Motion to Seal the Record in this matter be granted.

After ODC filed an objection, the Supreme Court issued an opinion on June 10, 2022, wherein the Supreme Court found that the HPS and the Court have the authority to impose reciprocal discipline regardless of whether the underlying discipline imposed is private or public and remanded the matter to the HPS to “proceed with the reciprocal disciplinary process set forth.” Lawyer Disciplinary Board v. Doheny, 247 W.Va. 53, 875 S.E.2d 191, 199 (2022). The Supreme Court stated that

Pursuant to Rule 3.20(a) of the Rules of LDP “[a] final adjudication in another jurisdiction ... of misconduct constituting grounds for disciplinary of a lawyer ... conclusively establish[es] such conduct” for any proceedings under “these rules.” Rule 3.20(a) does not simply authorize reciprocal discipline under the restrictions of the remaining subsections of Rule 3.20, but instead authorizes such discipline under the broader term of “these rules.” As more fully set forth below, “these rules,” namely the Rules of LDP, provide the HPS and this Court broad authority to impose discipline on attorneys licensed to practice in West Virginia. [Respondent’s] Private Reprimand is a final adjudication in another jurisdiction of misconduct constituting grounds for discipline, and pursuant to Rule 3.20(a) of the Rules of LDP, that final adjudication conclusively establishes such conduct.”

Id., 875 S.E.2d at 198.

The Supreme Court also rejected Respondent’s arguments to seal the records in this matter, noting that the Court had refused similar requests to seal the records on two prior occasions, and that Respondent had “provided no authority or justification to warrant a different decision at this stage of the proceedings to warrant a different decision with regard to his motion to seal the record in this matter.” Id., 875 S.E.2d at 200.

On February 22, 2023, a telephonic status conference was held in the above-referenced matter. Andrea J. Hinerman, Senior Lawyer Disciplinary Counsel, appeared for the Office of

Lawyer Disciplinary Counsel. Respondent appeared *pro se*. The HPS, comprised of Kelly D. Ambrose, Esquire, Chairperson, Henry W. Morrow, Jr., Esquire, and Dr. K. Edward Grose, Laymember, presided over this matter. Pending before the Hearing Panel Subcommittee was Respondent's second "Motion in Limine" filed on or about October 10, 2022, which sought to exclude the Office of Disciplinary Counsel's [hereinafter "ODC"] Exhibits Nos. 10, 12, 13 and 16 (Bates Nos. 93-143, 145-157 and 267-277), which Respondent collectively identified as "the Contested Documents." Disciplinary Counsel filed a response on or about November 22, 2022.

The HPS, having fully reviewed Respondent's second *Motion in Limine*, and Disciplinary Counsel's response thereto, and denied Respondent's motion noting that Respondent failed to request a formal hearing and documents were provided to ODC consistent with the applicable Rule of Lawyer Disciplinary Procedure. Whereupon the HPS inquired of Respondent whether he had requested a formal hearing in this matter pursuant to Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure. Respondent admitted that he had not requested a hearing pursuant to Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure and subsequently made an oral motion requesting a hearing. [Trans. p. 5] The HPS advised Respondent that his request for a hearing was denied as untimely. A discussion was then held regarding the Supreme Court's ruling in Lawyer Disciplinary Board v. Patrick J. Doheny, 247 W.Va. 3, 875 S.E.2d 191 (2022), application of Rule 3.20(e), and that reciprocal discipline should be imposed consistent with ODC's previous request of admonishment.⁴

On or about July 25, 2023, the Hearing Panel Subcommittee issued its decision in this matter and filed with the Supreme Court of Appeals of West Virginia its "Recommended Report of the Hearing Panel Subcommittee" (hereinafter "Report") and the transcript from the February 22, 2023 telephonic hearing. After careful consideration of the entire record, the Hearing Panel

⁴ See Order for the February 22, 2023 Status Conference.

Subcommittee determined that Respondent had not requested a formal hearing within the timeframe of Rule 3.20(d) and that pursuant to Rule 3.20(e), the same discipline could not be imposed because West Virginia does not issue private discipline; thus, a different type of discipline would be recommended. Accordingly, the Hearing Panel Subcommittee issued the following recommendation that Respondent be admonished.

B. HEARING PANEL SUBCOMMITTEE’S FINDINGS OF FACT

1. Patrick Doheny (hereinafter “Respondent”) is a lawyer who was admitted to the West Virginia State Bar on October 10, 2001, after successful passage of the Bar Exam. As such, he is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board. Respondent’s West Virginia law license is currently on Active status.
2. On January 5, 2017, Respondent was issued a private reprimand by the Disciplinary Board of the Supreme Court of Pennsylvania. [Attachment A to Notice of Reciprocal Disciplinary Action Pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure]
3. By Order entered October 19, 2016, the Disciplinary Board of the Supreme Court of Pennsylvania accepted and adopted the findings of the Hearing Committee which had recommended the imposition of a private reprimand. The Hearing Committee also found that Respondent had accepted responsibility for his action “and [found] nothing that would negatively impair Respondent’s fitness to continue to practice law. A practice monitor is unnecessary, as there is no indication that Respondent has an alcohol or other substance abuse problem.” [Attachment B to Notice of Reciprocal Disciplinary Action Pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure]

4. The Pennsylvania Office of Disciplinary Counsel had previously commenced formal disciplinary proceedings against Respondent based on Respondent's criminal conviction following a non-jury trial in the Court of Common Pleas of Allegheny County, Pennsylvania. On January 23, 2013, Respondent was convicted of (1) Aggravated Assault by Motor Vehicle while Driving Under the Influence, (2) Driving Under the Influence of Alcohol or Controlled Substance, (3) Driving Under the Influence of Alcohol, high rate of alcohol, (4) Driving Under the Influence of Alcohol or Controlled Substance, and (5) Failure to Keep Right. Respondent had also been charged, but was acquitted of, reckless driving. The convictions arose out of a motor vehicle accident that occurred on the night of October 5, 2011, wherein Respondent's vehicle crossed the center line of a roadway and collided with a motorcycle traveling in the oncoming direction. The operator of the motorcycle sustained serious bodily injuries and a civil action was also filed due to the accident and resulted in a settlement.
5. Respondent was sentenced on June 24, 2013, as follows: (1) placement into a county intermediate punishment program (IPP) for a period of eighteen (18) months which consisted of house arrest, work release, and the wearing of an ankle monitoring device; (2) Probation for a period of four years supervised by the Allegheny County Adult Probation Office subject to the following conditions: (a) payment of restitution in the amount of \$1.00; (b) have no contact with victim; (c) perform 100 hours of community service; and (d) do not operate a motor vehicle unless and until driver's license is restored; (3) court-ordered drug and alcohol evaluation; (4) safe driving classes; and (5) payment of a \$500.00 fine. Respondent's punishment commenced on June 24, 2013, and his probation continued until June of 2017.

6. The Order of the Disciplinary Board of the Supreme Court of Pennsylvania conclusively establishes Respondent's misconduct for the purposes of this reciprocal disciplinary proceeding and is a final adjudication of the matter in Pennsylvania.
7. On April 24, 2018, the Office of Lawyer Disciplinary Counsel (hereinafter "ODC") filed a "Notice of Reciprocal Disciplinary Action Pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure".
8. Paragraph 9 of that Notice advised Respondent that Disciplinary Counsel will request that the Hearing Panel Subcommittee impose a similar, but not the same sanction as the Disciplinary Board of the Supreme Court of Pennsylvania but that West Virginia Rules of Lawyer Disciplinary Procedure do not provide for a private reprimand as a permissible sanction.
9. In Paragraph 10 of that notice, in accordance with Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure, ODC advised Respondent of his right to challenge the validity of his Pennsylvania discipline, advised of his right to request a formal hearing and provide a complete copy of the record to the ODC within thirty (30) days.
10. Respondent neither requested a formal hearing nor provided a full copy of the record of the disciplinary proceedings which resulted to the imposition of the disciplinary order pursuant to Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure.

II. SUMMARY OF ARGUMENT

The Order of the Disciplinary Board of the Supreme Court of Pennsylvania wherein Respondent was issued a private reprimand conclusively establishes the misconduct for the purposes of this reciprocal disciplinary proceeding. Lawyer Disciplinary Board v. Doheny, 247 W.Va. 53, 875 S.E.2d 191, 198 (2022). See also, Lawyer Disciplinary Board v. Post, 219 W.Va.

82, 631 S.E.2d 921 (2006). After careful review of the record, the HPS found that Respondent neither requested a formal hearing nor provided a full copy of the record of the disciplinary proceedings which had resulted in the imposition of the disciplinary order pursuant to Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure. Furthermore, Respondent failed to establish any of the four exceptions of Rule 3.20(e) of the West Virginia Rules of Lawyer Disciplinary Procedure. The HPS properly found that the same discipline as was issued in Pennsylvania could not be recommended in this matter because West Virginia does not impose private discipline against attorneys and no mechanism exists in the Rules of Lawyer Disciplinary Procedure which would permit the disposition of Respondent's West Virginia disciplinary proceedings to remain private. Thus, the HPS did not err in recommending an admonishment, the least serious of formal discipline in West Virginia.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

On August 21, 2023, the Office of Lawyer Disciplinary Counsel filed its consent to the HPS's recommendation. Respondent filed his objection to the HPS's recommended decision on August 22, 2023. This Honorable Court's August 23, 2023 Order indicated that "[t]he Clerk of Court will, on a later date, provide the parties with a Notice of Argument under Rule 19(b) containing further information on the date and time of oral argument."

IV. STANDARD OF PROOF

In Syllabus Point 3 of Committee on Legal Ethics of the West Virginia State Bar v. McCorkle, 192 W.Va. 286, 452 S.E.2d 377 (1994), this Court held that,

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.

While the Lawyer Disciplinary Board makes recommendations to this Court regarding sanctions to be imposed upon an attorney for ethical violations, “[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.” Syllabus Point 3, Committee on Legal Ethics of the West Virginia State Bar v. Blair, 174 W.Va. 494, 327 S.E.2d 671 (1984).

V. ARGUMENT

A. THIS HONORABLE COURT HAS EXCLUSIVE AUTHORITY TO DEFINE, REGULATE AND CONTROL THE PRACTICE OF LAW IN WEST VIRGINIA.

It is acknowledged that the initiation of reciprocal discipline as the result of a private reprimand is an issue of first impression in this jurisdiction. This Honorable Court has the exclusive authority to define, regulate and control the practice of law in West Virginia, and has proper jurisdiction and authority to investigate and prosecute Respondent for alleged violations of the Rules of Professional Conduct. “In the exercise of this authority to regulate and control the practice of law, we have delegated to the [Board] certain administrative, investigative, and adjudicatory functions.” Lawyer Disciplinary Board v. Kupec (Kupec I), 202 W.Va. 556, 505 S.E.2d 619 (1998) quoting Committee on Legal Ethics v. McCorkle, 192 W.Va. 286, 288, 452 S.E.2d 377, 379 (1994). Further, the Office of Disciplinary Counsel was established by this Court to prosecute violations of the Rules of Professional Conduct. [Rule 4.4 of the West Virginia Rules of Lawyer Disciplinary Procedure]. Nothing done in the investigation has been in violation of the authority provided by this Court.

The Rules of Lawyer Disciplinary Procedure promulgated by this Court outline the responsibilities, duties and ‘powers’ of the ODC. These Rules are vested in sound public policy

and further the stated goals of the self-regulated lawyer disciplinary system in this State and ODC's actions in this matter protects the public, protects the integrity of the disciplinary system, protects the administration of justice, and deters other attorneys from engaging in similar misconduct. Reciprocal discipline is well established in attorney discipline and is used to prevent a lawyer admitted to practice in more than one jurisdiction from avoiding the effect of discipline by practicing in another jurisdiction, to prevent the re-litigation of misconduct that already has been established in another jurisdiction, and to protect the public from lawyers who commit such misconduct. See Disciplinary Counsel v. Lapine, 128 Ohio St.3d 87, 942 N.E.2d 328 (2010). See also, People v. Bode (Colo.O.P.D.J.2005), 119 P3d 1098, 1100 (the purpose of reciprocal discipline is "to enhance public confidence in the profession by preventing lawyers admitted to practice in more than one jurisdiction from avoiding the effect of discipline by simply practicing in another jurisdiction").

B. THE ORDER OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA CONCLUSIVELY ESTABLISHES RESPONDENT'S MISCONDUCT FOR THE PURPOSES OF THIS RECIPROCAL DISCIPLINARY PROCEEDING AND IS A FINAL ADJUDICATION OF THE MATTER IN PENNSYLVANIA.

On January 5, 2017, Respondent was issued a private reprimand by the Disciplinary Board of the Supreme Court of Pennsylvania. [Attachment A to Notice of Reciprocal Disciplinary Action Pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure]

By Order entered October 19, 2016, the Disciplinary Board of the Supreme Court of Pennsylvania accepted and adopted the findings of the Hearing Committee which had recommended the imposition of a private reprimand. The Hearing Committee also found that Respondent had accepted responsibility for his action "and [found] nothing that would negatively impair Respondent's fitness to continue to practice law. A practice monitor is unnecessary, as there is no indication that Respondent has an alcohol or other substance abuse problem."

[Attachment B Notice of Reciprocal Disciplinary Action Pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure]

The Pennsylvania Office of Disciplinary Counsel had previously commenced formal disciplinary proceedings against Respondent based on Respondent's criminal conviction following a non-jury trial in the Court of Common Pleas of Allegheny County, Pennsylvania. On January 23, 2013, Respondent was convicted of (1) Aggravated Assault by Motor Vehicle while Driving Under the Influence, (2) Driving Under the Influence of Alcohol or Controlled Substance, (3) Driving Under the Influence of Alcohol, high rate of alcohol, (4) Driving Under the Influence of Alcohol or Controlled Substance, and (5) Failure to Keep Right. Respondent had also been charged, but was acquitted of, reckless driving. The convictions arose out of a motor vehicle accident that occurred on the night of October 5, 2011, wherein Respondent's vehicle crossed the center line of a roadway and collided with a motorcycle traveling in the oncoming direction. The operator of the motorcycle sustained serious bodily injuries and a civil action was also filed due to the accident and resulted in a settlement.

Respondent was sentenced on June 24, 2013, as follows: (1) placement into a county intermediate punishment program (IPP) for a period of eighteen (18) months which consisted of house arrest, work release, and the wearing of an ankle monitoring device; (2) Probation for a period of four years supervised by the Allegheny County Adult Probation Office subject to the following conditions: (a) payment of restitution in the amount of \$1.00; (b) have no contact with victim; (c) perform 100 hours of community service; and (d) do not operate a motor vehicle unless and until driver's license is restored; (3) court-ordered drug and alcohol evaluation; (4) safe driving classes; and (5) payment of a \$500.00 fine. Respondent's punishment commenced on June 24, 2013, and his probation continued until June of 2017.

The Order of the Disciplinary Board of the Supreme Court of Pennsylvania wherein Respondent was issued a private reprimand conclusively establishes the misconduct for the purposes of this reciprocal disciplinary proceeding. Lawyer Disciplinary Board v. Doheny, 247 W.Va. 53, 875 S.E.2d 191, 198 (2022). See also, Lawyer Disciplinary Board v. Post, 219 W.Va. 82, 631 S.E.2d 921 (2006).

C. RESPONDENT FAILED TO REQUEST A HEARING OR FILE WITH THE OFFICE OF DISCIPLINARY COUNSEL A FULL COPY OF THE RECORD OF THE DISCIPLINARY PROCEEDINGS WHICH RESULTED TO THE IMPOSITION OF THE DISCIPLINARY ORDER PURSUANT TO RULE 3.20(D) OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE

On April 24, 2018, the Office of Lawyer Disciplinary Counsel (hereinafter “ODC”) filed a “Notice of Reciprocal Disciplinary Action Pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure”. Paragraph 9 of that Notice advised Respondent that Disciplinary Counsel will request that the Hearing Panel Subcommittee impose a similar, but not the same sanction as the Disciplinary Board of the Supreme Court of Pennsylvania because West Virginia Rules of Lawyer Disciplinary Procedure do not provide for a private reprimand as a permissible sanction. In Paragraph 10 of that notice, in accordance with Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure, ODC advised Respondent of his right to challenge the validity of his Pennsylvania discipline, advised of his right to request a formal hearing and provide a complete copy of the record to the ODC within thirty (30) days. The HPS found that Respondent neither requested a formal hearing nor provided a full copy of the record of the disciplinary proceedings which resulted to the imposition of the disciplinary order pursuant to Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure. Furthermore, at the February 22, 2023 telephonic conference, Respondent acknowledged that he did not request a formal hearing within the perimeters of Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure. [Trans. p. 5]

D. THE SAME DISCIPLINE CANNOT BE IMPOSED PURSUANT TO RULE 3.20(E) FO THE RULES OF LAWYER DISCIPLINARY PROCEDURE BECAUSE WEST VIRGINIA RULES OF LAWYER DISCIPLINARY PROCEDURE DO NOT PROVIDE FOR THE ISSUANCE OF PRIVATE DISCIPLINE

Rule 3.20(e) provides that at the conclusion of proceedings brought under Rule 3.20 the Hearing Panel Subcommittee shall refer the matter to the Supreme Court of Appeals with the recommendation that the same discipline be imposed as was imposed by the foreign jurisdiction unless it is determined by the Hearing Panel Subcommittee that (1) the procedure followed in the foreign jurisdiction did not comport with the requirements of due process law; (2) the proof upon which the foreign jurisdiction based its determination of misconduct is so inform that the Supreme Court of Appeals cannot, consistent with its duty, accept as final the determination of the foreign jurisdiction; (3) the imposition by the Supreme Court of Appeals of the same discipline imposed in the foreign jurisdiction would result in grave injustice; or (4) the misconduct proved warrants that a substantially different type of discipline by imposed by the Supreme Court of Appeals.

In this case, the reciprocal discipline notice advised that a different discipline from the foreign jurisdiction would be sought by ODC. Pursuant to the applicable Rules of Lawyer Disciplinary Procedure, the least serious of formal discipline in West Virginia is an admonishment. This level of sanction is applied in cases of minor misconduct and when there is little or no injury to a client, the public, the legal system, or the professional. The ABA Standards for Imposing Lawyer Sanctions states that “admonition” is also known as a “private reprimand” and that as a non-public sanction, it still declares the attorney’s conduct to be improper but does not limit the attorney’s right to practice. See, ABA Standards for Imposing Lawyer Sanctions, Section 2.6.

A different sanction is also sought because there is no private discipline in this jurisdiction and no mechanism in the Rules of Lawyer Disciplinary Procedure permit ODC to keep the disposition of Respondent's West Virginia disciplinary proceedings private. All final dispositions of disciplinary proceedings initiated against attorneys in West Virginia are placed in a file that is accessible to the public. The Supreme Court of Appeals of West Virginia has held that "[u]nder the [West Virginia Constitution] art. III, § 17, which provides that 'The courts of this state shall be open,' there is a right of public access to attorney disciplinary proceedings." Daily Gazette Co. v. Committee on Legal Ethics, 174 W.Va. 359, 365, 326 S.E.2d 705, 711 (1984). The Daily Gazette Court also found there "[w]here formal disciplinary charges in an attorney disciplinary proceeding are filed, following a determination that probable cause exists to substantiate allegations of an ethical violation, the hearing on such charges shall be open to the public, who shall be entitled to all reports, records, and nondeliberative materials introduced at such hearing, including the record of the final action taken." Daily Gazette, 147 W.Va. at 367, 326 S.E.2d at 713. The Court has also stated that "[t]he right to public access to attorney disciplinary proceedings precludes the utilization of private reprimand as a permissible sanction." Syl. Pt. 7, Daily Gazette Co. v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984).⁵ Finally, the principal purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Syl. pt. 3, Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); and Syl. pt. 2, Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

⁵ ODC is aware of one West Virginia case, In re L.E.C., 171 W.Va. 670, 301 S.E.2d 627 (1983), decided under previous rules, Article VI, § 17(c), By-Laws of the West Virginia State Bar, and prior to this Court's decision in Daily Gazette wherein a West Virginia attorney had been issued a private reprimand by the Committee on Legal Ethics and the attorney had appealed the issuance of the private reprimand to the Supreme Court. The Court noted that "[a] private reprimand is not insignificant. A lawyer's good record is important to him." In re L.E.C., 171 W.Va. at 672, 301 S.E.2d at 629.

Pursuant to Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure, Respondent was advised of his right to challenge the validity of his Pennsylvania discipline and advised of his right to request a formal hearing and provide a complete copy of the record to ODC. Respondent admitted that he neither requested a formal hearing nor provided a full copy of the record of the disciplinary proceedings. Furthermore, Respondent has not asserted and no argument has been presented that the procedures followed in Pennsylvania did not comport with requirements of due process of law. No evidence was presented demonstrating that the proof upon which Respondent's disciplinary action was based was so infirm as to taint the final disposition of the case. While Respondent stated at the February 23, 2023 telephonic conference, that the imposition of the same discipline would result in a grave injustice, he had not presented evidence that a grave injustice would result from the imposition of reciprocal discipline in this matter. Moreover, the reciprocal discipline notice filed by ODC on April 24, 2018, advised that a different discipline from the foreign jurisdiction would be sought.

Pursuant to the applicable Rules of Lawyer Disciplinary Procedure, the least serious of formal discipline in West Virginia is an admonishment. This level of sanction is applied in cases of minor misconduct and when there is little or no injury to a client, the public, the legal system, or the professional. The ABA Standards for Imposing Lawyer Sanctions states that "admonition" is also known as a "private reprimand" and that as a non-public sanction, it still declares the attorney's conduct to be improper but does not limit the attorney's right to practice. See, *ABA Standards for Imposing Lawyer Sanctions*, Section 2.6.

It is acknowledged that pursuing reciprocal discipline of a private reprimand would be an issue of first impression in this jurisdiction. However, at least two other jurisdictions have issued public discipline against attorneys based upon the issuance of private discipline in another

jurisdiction. In Kentucky Bar Association v. Shane, 553 S.W.2d 467 (Ky. 1977), the Supreme Court of Kentucky issued a public reprimand against an out of state attorney who had been issued a private reprimand by the Cincinnati Bar Association for violating Disciplinary Rule 7-104(A)(1) which prohibited contact with a party the lawyer knew was represented by counsel. After the Board of Governors of the Kentucky Bar Association determined that the attorney had also violated the same rule and voted for a public reprimand, the attorney argued that his punishment should be no more severe than that issued by the Cincinnati Bar Association. While this case is not technically a reciprocal disciplinary action, the Kentucky Supreme Court noted that the attorney was subject to the jurisdiction of the Court and that the Court was “not bound by the disciplinary penalties imposed in a foreign jurisdiction for the same conduct for which he is to answer in Kentucky.” Shane, 553 S.W.2d 467 (Ky. 1977). In an unreported reciprocal matter, the Supreme Court of Illinois also publicly reprimanded an attorney who had been issued a private reprimand in Indiana. *See also, In re Hittinger*, M.R. 20212, 05 RC 1515 (September 26, 2005) (unreported). In that case, the Supreme Court of Illinois, without comment, entered an order publicly reprimanding the attorney. It was argued in the underlying pleadings that even though applicable Illinois rules did not provide for the sanction of a private reprimand, the Supreme Court had previously issued public censures against attorneys for the same underlying misconduct.

The Supreme Court of Appeals of West Virginia has issued admonishments or admonitions against attorneys. *See, Lawyer Disciplinary Board v. Beveridge*, 194 W.Va. 154, 459 S.E.2d 542 (1995)(per curiam) (Supreme Court, as the final arbiter and exercising *de novo* review, found recommended sanction of suspension to be too harsh and instead issued an admonishment against attorney for violating Rules 1.3, 1.4(b), 8.1(b), among other sanctions);

Lawyer Disciplinary Board v. Mooney, No. 33595 (W.Va. Supreme Court, May 5, 2008) (attorney admonished for violating Rules 1.3, 1.4(a) and (b), and 8.1(b), imposed one year period of supervised practice; ordered to undergo comprehensive psychological counseling and follow recommended treatment plan; complete additional six hours of CLE over and above that required; and pay costs); Lawyer Disciplinary Board v. Burke, 230 W.Va. 158, 737 S.E.2d 55 (2013) (attorney acting as special counsel for bankruptcy trustee admonished for violations of Rules 1.15, 1.3 and 1.4, pay costs of proceeding and satisfy any obligations imposed on him in a pending adversary proceeding filed in bankruptcy court); Lawyer Disciplinary Board v. Lindroth, No. 16-0016 (W.Va. Supreme Court, October 5, 2016) (attorney admonished for violating Rule 1.8(e) and further ordered to complete an additional nine hours of continuing legal education in the area of ethics and pay costs).

Furthermore, this Court has issued a different sanction in a reciprocal matter. In Lawyer Disciplinary Board v. Basdekis, No. 16-0134 (W.Va. Supreme Court, January 25, 2017), the attorney was issued four (4) month suspension, the execution of which was suspended in favor of an eighteen (18) month period of supervised probation. In the original jurisdiction, the attorney had been issued the same discipline but the probation was “unsupervised.” The Court adopted the HPS’s recommendation of supervised probation which noted that the change from unsupervised probation to supervised probation was being made because the attorney in question was now located in West Virginia.

E. ALL FINAL DISPOSITIONS OF ATTORNEY DISCIPLINARY PROCEEDINGS IN WEST VIRGINIA ARE PUBLIC.

There is no private discipline in this jurisdiction and no mechanism in the Rules of Lawyer Disciplinary Procedure which permit ODC to keep the disposition of Respondent's West Virginia disciplinary proceedings private. Indeed, all final dispositions of attorney disciplinary

proceedings in West Virginia are public and at the conclusion of proceedings are placed in a file that is accessible to the public. The Supreme Court of Appeals of West Virginia has held that "[u]nder the [West Virginia Constitution] art. III, § 17, which provides that 'The courts of this state shall be open,' there is a right of public access to attorney disciplinary proceedings." Daily Gazette Co. v. Committee on Legal Ethics, 174 W.Va. 359, 365, 326 S.E.2d 705, 711 (1984). The Daily Gazette Court also found there "[w]here formal disciplinary charges in an attorney disciplinary proceeding are filed, following a determination that probable cause exists to substantiate allegations of an ethical violation, the hearing on such charges shall be open to the public, who shall be entitled to all reports, records, and nondeliberative materials introduced at such hearing, including the record of the final action taken." Daily Gazette, 174 W.Va. at 367, 326 S.E.2d at 713. The Court has also stated that "[t]he right to public access to attorney disciplinary proceedings precludes the utilization of private reprimand as a permissible sanction." Syl. Pt. 7, Daily Gazette Co. v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984).⁶ Finally, the principal purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Syl. pt. 3, Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); and Syl. pt. 2, Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

VI. CONCLUSION


Accordingly, the Office of Lawyer Disciplinary Counsel respectfully requests that this Honorable Court find that the Hearing Panel Subcommittee considered the record and adopt the Hearing Panel Subcommittee's recommendation that admonishment is the appropriate sanction

⁶ *But see, In re L.E.C.*, 171 W.Va. 670, 301 S.E.2d 627 (1983), decided under previous rules, Article VI, § 17(c), By-Laws of the West Virginia State Bar, and prior to this Court's decision in Daily Gazette wherein a West Virginia attorney had been issued a private reprimand by the Committee on Legal Ethics and the attorney had appealed the issuance of the private reprimand to the Supreme Court. The Court noted that "[a] private reprimand is not insignificant. A lawyer's good record is important to him." In re L.E.C., 171 W.Va. at 672, 301 S.E.2d at 629.

in this reciprocal disciplinary proceeding for the reasons stated herein.

Respectfully submitted,

The Lawyer Disciplinary Board
By Counsel



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

ATTACHMENT

1

DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH

***Petition Allowed by the Illinois Supreme Court
and Imposing Reciprocal Discipline***

Allowed September 26, 2005

IN THE SUPREME COURT OF ILLINOIS

In the Matter of:

JOSEPH BRIAN HITTINGER,

Attorney-Respondent,

No. 6204291.

Supreme Court No. M.R. 20212

Commission No. 05 RC 1505

**PETITION FOR RECIPROCAL DISCIPLINE
PURSUANT TO SUPREME COURT RULE 763**

Mary Robinson, Administrator of the Attorney Registration and Disciplinary Commission, by her attorney, Susan Frederick Rhodes, pursuant to Supreme Court Rule 763, reports to this court that the Supreme Court of the State of Indiana has privately reprimanded Respondent, Joseph Brian Hittinger. The Administrator petitions this court to impose reciprocal discipline upon Respondent by reprimanding him or by imposing such other discipline as the Court deems just. In support of her petition, the Administrator states:

I. BACKGROUND

1. Respondent was admitted to the practice of law in Illinois in 1990 and licensed in Indiana in 1992.
2. Respondent is registered in Illinois as active for the year 2005.

II. INDIANA DISCIPLINARY PROCEEDINGS

A. Procedural History

3. The Disciplinary Commission of the Supreme Court of Indiana filed a two-count complaint for disciplinary action against Respondent on August 5, 2003, Ex. 1.

PAGE 2:

4. The Disciplinary Commission and Respondent subsequently submitted to the Indiana Supreme Court a Statement of Circumstances and Conditional Agreement for Discipline. Ex. 2. The parties agreed that Respondent engaged in misconduct and that a private reprimand was an appropriate sanction. *Id.* The Indiana Supreme Court approved the Conditional Agreement and filed a *per curiam* opinion in the matter on December 23, 2004. *Id.* The Court entered a final order of a private reprimand of Respondent on January 5, 2005. Ex. 3. [FN1]

B. Statement of Facts

5. Respondent's client and the client's employee were charged with multiple charges of conspiracy to defraud the United States, food stamp trafficking and filing false income tax returns. Ex. 2-1. The employee was represented by other counsel. *Id.*
6. Respondent and his co-counsel determined that it would be in the best interest of their client to have his trial severed from the trial of his employee. Ex. 2-2. Respondent concluded that the best way to accomplish a severed trial would be if his client's employee agreed to waive his Fifth Amendment rights and testify favorably for his client. *Id.* Respondent concluded that a signed affidavit from the employee would be the best way to show his intention to testify for Respondent's client. *Id.*
7. Respondent spoke several times with counsel for the employee about severing their clients' trial, and at no time did counsel give Respondent any indication of whether she was in favor or opposed to the severance. *Id.* On August 9, 2000, Respondent's co-counsel faxed to counsel for the employee a copy of a form of affidavit that he wanted the employee to sign to allow for the severance of the trials. *Id.*

¹ Although Respondent's sanction was a private reprimand, Rule 23, section 22(a) of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys provides that after a verified complaint has been filed with the Court, all proceedings and papers filed of record with the Clerk shall be open and available to the public. See Ex. 4.

PAGE 3:

8. On August 24, 2000, the date that all pretrial motions were due to be filed in the case, Respondent met with his client at his store; Respondent's client's employee was also there working at the time. Ex. 2-2, 2-3. Respondent had his client file with him, including the proposed affidavit that had previously been faxed to counsel for the employee. Ex. 2-2. Respondent's client took Respondent to his home, which was attached to his store, and Respondent gave him the copy of the affidavit. *Id.* Respondent explained to his client that the affidavit had been faxed to the employee's counsel and was intended to support the severance of the trial, but that the employee's counsel had not given any indication as to whether the employee would sign the affidavit. *Id.*
9. Respondent's client then left his home to talk to his employee and to see if his employee would sign the affidavit. *Id.* About ten minutes later, Respondent's client returned to his home with his employee, who had the affidavit in his hand. *Id.* They spoke to each other, in the presence of Respondent, and the employee signed the affidavit. *Id.* The employee never spoke to his counsel about the affidavit. *Id.*
10. Respondent then left and drove to the federal courthouse, where he filed the affidavit. Ex. 2-3. The next day, Respondent filed a motion to sever his client's trial from the employee's trial. *Id.*
11. On September 7, 2000, counsel for the employee filed a motion to strike the affidavit and to prohibit its use, claiming that she had not spoken to her client about whether he should sign the affidavit. *Id.* On September 13, 2000, after counsel for the employee informed the court that her client would not testify as the affidavit claimed he would, Respondent withdrew the motion to sever the trial. *Id.*

PAGE 4:

C. Factors in Mitigation

12. It was considered in mitigation that Respondent promptly withdrew his motion to sever when he learned of the objection to the affidavit. Ex. 3-5. He also cooperated with the Commission during the investigation, and he had no prior history of disciplinary action. *Id.* It was further considered in mitigation that Respondent's actions were not motivated by his own personal gain, but rather by his effort to zealously represent his client. *Id.*

III. INDIANA RULES OF PROFESSIONAL MISCONDUCT

13. The Supreme Court of the State of Indiana found that Respondent violated the following Indiana Rules of Professional Conduct: [FN2]

- a. Rule 4.2, prohibiting a lawyer from communicating about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law or a court order; and
- b. Rule 4.4, prohibiting a lawyer from using means that have no substantial purpose other than to embarrass, delay, or burden a third person, or from using methods of obtaining evidence that violate the legal rights of such a person.

Ex. 2-3, 2-4; Ex. 4.

IV. REQUEST FOR RECIPROCAL DISCIPLINE

14. Illinois Supreme Court Rule 763 provides that if any attorney licensed to practice in Illinois is disciplined in a foreign state, he may be subjected to the same or comparable discipline in Illinois as that imposed by the foreign state upon proof of the foreign state's order

² A copy of the pertinent Indiana Rules of Professional Conduct is attached as Exhibit 4.

PAGE 5:

of discipline. See also *In re Wüte*, 99 Ill. 2d 301, 458 N.E.2d 484 (1983); *In re Neff*, 83 Ill. 2d 20, 413 N.E.2d 1282 (1980).

15. In this case, the Supreme Court of Indiana Rules of Professional Conduct violated by Respondent correspond to the following Illinois Rules of Professional Conduct:

- a. Rule 4.2, prohibiting a lawyer from communicating or causing another to communicate on the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter unless the first lawyer has obtained the prior consent of the lawyer representing such other party or as may otherwise be authorized by law; and
- b. Rule 4.4, prohibiting a lawyer from using means that have no substantial purpose other than to embarrass, delay, or burden a third person, or from using methods of obtaining evidence that violates the legal rights of such a person.

16. Although Supreme Court Rule 770 does not include the sanction of a private reprimand, this Court has imposed a reprimand or a censure as a sanction for an attorney's unauthorized contact with a represented party. In *In re Kuenstler*, 04 CH 14, M.R. 19672 (Nov. 17, 2004), an attorney was censured when he took the deposition of a witness in a case he was defending, without the knowledge or consent of the witness' counsel, knowing that the witness was also a plaintiff in a related case in which he represented the same client and that the witness was represented by counsel. In *In re Gonnella*, 00 CH 43, M.R. 17337 (March 22, 2001), an attorney representing a client on allegations of child abuse was censured after meeting with his client's minor son without permission of the minor's appointed counsel. In *In re Varlas*, 99 RC

PAGE 6:

1300, M.R. 13932 (Sept. 29, 1999), an attorney was reprimanded for neglecting her client's divorce matter and for initiating direct communication with the adverse party outside the presence of his counsel.

V. CONCLUSION

WHEREFORE, the Administrator requests that this Court enter an order of reciprocal discipline upon Respondent by reprimanding him or by imposing such other discipline as the Court deems just.

Respectfully submitted,

Mary Robinson,
Administrator
Attorney Registration and
Disciplinary Commission

Susan Frederick Rhodes
Counsel for the Administrator
One Prudential Plaza
130 East Randolph Drive
Suite 1500
Chicago, Illinois 60601
(312) 565-2600

By: Susan Frederick
Rhodes

DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH

M.R.20212 - In re: Joseph Brian Hittinger. (September 26, 2005)

Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose reciprocal discipline pursuant to Supreme Court Rule 763 is allowed, and respondent Joseph Brian Hittinger, who has been disciplined in the State of Indiana, is reprimanded in the State of Illinois.

Order entered by the Court.

ATTACHMENT

2

STATE OF WEST VIRGINIA

OFFICE OF
DISCIPLINARY COUNSEL

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 22nd of May, 2008, the following Order was made and entered:

Lawyer Disciplinary Board, Petitioner

vs.) No. 33595

Joan A. Mooney, Esq., a member of The West
Virginia State Bar, Respondent

On a former day, to-wit, March 12, 2008, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by David A. Jividen, its chairperson, pursuant to Rule 3.10 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition in this matter, stipulated to by the parties, recommending that: (1) the respondent be issued a reprimand for her conduct; (2) the respondent sign and follow a plan of supervised practice for a period of one year with a supervising attorney of respondent's choice, with prior approval by the Office of Disciplinary Counsel. The supervisor shall meet with respondent to conduct an initial interview of respondent's office practices, focusing upon calendaring, scheduling, a "tickler" system, mail handling, returning telephone calls and advising clients of the status of cases. The supervisor and respondent shall meet once a week, and shall submit a monthly report to the Office of Disciplinary Counsel during the period of supervision, regarding, among other things, the status of all legal matters the respondent has undertaken; (3) the respondent undergo comprehensive psychological counseling with a licensed psychologist and specifically

discuss this ethics complaint and the ensuing charges, her standard for client care, and the fact that she did not response to the Office of Disciplinary Counsel. Respondent must follow the recommended treatment plan and provide evidence of the same to the Office of Disciplinary Counsel; (4) the respondent shall complete an additional six hours of Continuing Legal Education during the 2006-2008 reporting period, specifically in the ethics and/or office management, over and above that already required; and (5) the respondent shall pay the costs incurred in this disciplinary proceeding.


Upon consideration whereof, the Court does not concur with the written recommended disposition of the Hearing Panel Subcommittee of the Lawyer Disciplinary Board in whole, but only in part. It is therefore ordered that: (1) the respondent, Joan A. Mooney, a member of The West Virginia State Bar, be, and she hereby is admonished; (2) the respondent shall sign and follow a plan of supervised practice for a period of one year with a supervising attorney of respondent's choice approved by the Office of Disciplinary Counsel. The initial interview with the respondent and supervising attorney shall focus on office practices, calendaring, scheduling, a "tickler" system, mail handling, returning telephone calls and advising clients of the status of cases. The respondent and her supervising attorney shall thereafter meet once a week and submit monthly reports to the Office of Disciplinary Counsel, regarding, among other things, the status of all legal matters the respondent has undertaken; (3) the respondent shall undergo comprehensive psychological counseling with a licensed psychologist and specifically discuss this ethics complaint and the ensuing charges, her standard for client care, and the fact that she did

not respond to the Office of Disciplinary Counsel. Respondent must follow the recommended treatment plan and provide evidence of the same to the Office of Disciplinary Counsel; (4) the respondent shall complete an additional six hours of Continuing Legal Education, over and above that already required, during the 2006-2008 reporting period, specifically in ethics and/or office management; and (5) pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, respondent shall pay the costs incurred in this disciplinary proceeding.

Service of an attested copy of this order shall constitute sufficient notice of its contents.

A True Copy

Attest:


Clerk, Supreme Court of Appeals

ATTACHMENT

3

RECEIVED

OCT 13 2016

OFFICE OF
DISCIPLINARY COUNSEL

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 5th of October, 2016, the following order was made and entered:

Lawyer Disciplinary Board,
Petitioner

vs.) No. 16-0016

Richard J. Lindroth, a member of
The West Virginia State Bar,
Respondent

ORDER

On August 29, 2016, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Richard M. Yurko, Jr., its chairperson, pursuant to Rule 3.10 of the Rules of Lawyer Disciplinary Procedure, presented to the Court its written recommended disposition in this matter, recommending that: (1) the respondent be admonished; (2) the respondent attend an additional nine hours of continuing legal education in the area of ethics over and above his otherwise required continuing legal education hours to be completed during the next reporting period; and (3) respondent be ordered to pay the costs of these proceedings.

On September 27, 2016, the Office of Disciplinary Counsel, by Jessica H. Donahue Rhodes, Lawyer Disciplinary Counsel, filed its consent to the recommendation.

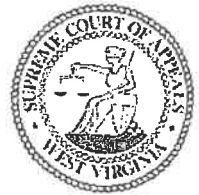
Upon consideration, the Court is of the opinion to and does hereby concur with and does hereby approve the recommendations of the Hearing Panel Subcommittee. It is therefore ordered that: (1) respondent shall be, and he hereby is, **admonished**; (2) respondent shall complete an additional nine hours of continuing legal education in the

area of ethics, in addition to the otherwise required mandatory continuing legal education hours, during the next reporting period; and (3) respondent shall pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Service of a copy of this order upon all parties herein shall constitute sufficient notice of the contents herein.

A True Copy

Attest: //s// Rory L. Perry II
Clerk of Court



ATTACHMENT

4

RECEIVED

JAN 31 2017

**Office of
Disciplinary Counsel**

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 25th of January, 2017, the following order was made and entered:

Lawyer Disciplinary Board,
Petitioner

vs.) No. 16-0134

Athanasios Basdekis, a member of
The West Virginia State Bar,
Respondent

ORDER

On November 28, 2016, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Kelly D. Ambrose, its chairperson, pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure, presented to the Court its report containing its written recommended disposition in this reciprocal disciplinary action, recommending that this Court adopt the joint stipulations and joint recommendation entered into by the parties. The Hearing Panel Subcommittee recommends that the respondent's license to practice law be suspended for a period of four months, execution of which be suspended in favor of an eighteen-month period of supervised probation subject to the conditions set forth in the joint recommendation.

Thereafter, on December 16, 2016, the Office of Disciplinary Counsel, by Andrea J. Hinerman, Senior Lawyer Disciplinary Counsel, filed its consent to the Hearing Panel Subcommittee's recommendation.

Upon consideration, the Court is of the opinion to and does hereby concur with and does approve the recommended disposition of the Hearing Panel Subcommittee of

the Lawyer Disciplinary Board. It is therefore ordered that the respondent's license to practice law in the State of West Virginia shall be suspended for a period of four months, execution of which is hereby suspended in favor of an eighteen-month period of supervised probation subject to the conditions set forth in the report and recommendation of the Hearing Panel Subcommittee. It is finally ordered that the respondent shall pay the costs of this proceeding pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Service of an attested copy of this order shall constitute sufficient notice of its contents.

A True Copy

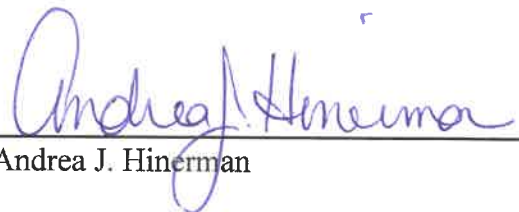
Attest: //s// Rory L. Perry II
Clerk of Court



CERTIFICATE OF SERVICE

This is to certify that I, Andrea J. Hinerman, Senior Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 10th day of October, 2023, served a true copy of the foregoing **"BRIEF OF THE OFFICE OF LAWYER DISCIPLINARY COUNSEL"** upon Respondent Patrick Doheny by mailing the same via United States Mail with sufficient postage, to the following address:

Patrick Doheny, Esquire
Post Office Box 23354
Pittsburgh, Pennsylvania 15222



Andrea J. Hinerman