

FILE COPY

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



**LAWYER DISCIPLINARY BOARD
PETITIONER**

**DO NOT REMOVE
FROM FILE**

v

Case Number 22-0123

**J. STEVEN HUNTER
RESPONDENT**

BRIEF OF J. STEVEN HUNTER

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I. STATEMENT OF THE CASE

A. NATURE OF PROCEEDINGS

An action that would lead to Respondent's law license being suspended for one (1) year pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure; that Respondent would then complete an additional nine (9) hours of continuing legal education before reinstatement, during the current reporting period, three (3) hours which should be in IOLTA accounts and the other six (6) hours in ethics and office management. The Respondent must then comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure

B. FINDINGS OF FACT

1. J Steven Hunter, (hereinafter "I" or "Hunter"), West Virginia State Bar 1826, graduated from the West Virginia University College of Law in 1973 and under the diploma privilege was admitted to practice in the state of West Virginia in May 1973. I have been a practicing lawyer for fifty (50) years. I graduated from Frankford High School in Greenbrier County in 1965. I graduated from the WVU College of Agriculture and Forestry in 1970. During my education years I served as State President of the West Virginia Association of the Future farmers of America 1965-1966. I served two terms as Speaker of the House of the WVU Student body Legislature in 1967-1969. I was a member and officer of Sphinx and Mountain, men's Honorary's.. [Hrg. Tr. at 33].

2. Upon admission to the bar, J Steven Hunter located in Marlinton, Pocahontas County West Virginia and began private practice of law with Eugene M Simmons. Upon the advice of Judge Nickelll Kramer moved into my own practice in November 1973. I

was engaged in a general practice of law. It included property law, criminal law, divorce, estate law, civil tort liability, wills, deeds and the usual matters brought to a small town country lawyer. I served as a Commissioner of Accounts beginning in June of 1973 to July of 1985. I currently serve as a Fiduciary Commissioner in Greenbrier County. I served as court appointed Federal Public Defenders Panel in the Southern District of West Virginia for nearly twenty (20) years. [Hrg. Tr. at 344-350]

3. In 1975, at the request of certain citizens I ran for public office as a member of the Pocahontas County Commission and was elected¹ and served two years until I was ultimately elected Prosecuting Attorney for Pocahontas County and served two four year terms. I was elected and served as Chair of the Region IV Planning and Development Council in Summersville, WV. I was active in the West Virginia Association of County Officials. I was a Charter Board Member of the Mountain Transit Authority. We developed public transportation in a five-county area in 1972 and MTA still provides a valuable community service today. [Hrg. Tr. at 344-350]

4. In 1985, I was selected and appointed to serve as General Counsel for the West Virginia Public Service Commission and moved to Charleston, West Virginia. I served as General Counsel. I resigned upon a change of Governors. I then returned to Greenbrier County and began practicing in February 1989. I have been engaged in the general practice of law in Greenbrier County since then.[Hrg. Tr. at 344-350]

5. While living in Pocahontas County with my wife DeEtta King Hunter, I was active in many community, civic organizations and government functions. I served in the

¹At the time, I was the youngest elected County Commissioner in West Virginia.

Marlinton Rotary club and served as President of the same. He was a member of the Marlinton Jaycees. I was President of the Marlinton Chamber of Commerce. I was active with the Pocahontas Development Authority and served as Chair of the same for several years. I and my wife were supporters of various civic groups and organizations while in Pocahontas County. I served on the Advisory Council for the Buckskin Council of the Boy Scouts of America for over fifteen years.[Hrg. Tr. at 344-350]

6 DeEtta King Hunter is Hunter's wife and has been since February 10, 1979. Over those years DeEtta worked in my law office with and without pay. The only periods that she had not been in my office most of the time was when she served as Mayor of Lewisburg. Since the retirement of my long time paralegal, Barbara Dailey in 2019, she has been working without pay in the office of Steve Hunter Assoc. L.C. and to satisfy the Secretary of State she was designated as Secretary-Treasurer but of course has no stock ownership. She has a Bachelors degree in political science and accounting from Fairmont State and Masters of Public Administration from West Virginia University. Unfortunately, she developed a close personal relationship with Raymond Peters and Karen Bordonaro. This led to too much involvement and concern for the lack of care for Raymond Peters. [Hrg. Tr. at 344-350]

7. Mr. Stephen Peters counsel sent a letter concerning contact by Mrs. Hunter with Mr. Raymond Peters. My office had contacted the guardian ad litem telephonically over concerns expressed by Ms. Bordonaro (wife of Raymond Peters per marriage by Judge Dent in Greenbrier County) over the care Mr. Peters was and was not receiving from his guardian and conservator. She requested Wellness checks by State Trooper Cooper and Amelia wins by. After the one incident when Mr. McCallister came and

asked her to leave, DeEtta with Raymond Peters had no further contact and he died alone in his home. Mr. Hunter admonished Mrs. Hunter, but. she is a caring, compassionate and intelligent adult and Mr. Hunters wife. [Hrg. Tr. at 344-350]

8. Mr. Raymond Peters passed away November 23, 2020. A copy of his death certificate noted he appeared to be malnourished at the time they discovered his body, and as affirmed by Lantz Funeral Home who handled the arrangements. Only when I called Kyle Lusk on December 2, 2020 did we know Raymond Peters was dead. I in turn advised Raymond Peters wife, Karen Bordonaro that her husband had died and been buried.. Mr Lusk and Hunter had been attempting to settle the matter. The full sum of \$5,000.00 received by the Hunter Law firm was repaid to the estate. A Will contest and Divorce action are still pending in the Summers County Circuit Court and Summers County Family Court. [Hrg. Tr. at 344-350]

10. I have provided service to thousands of clients in my fifty years of practice. I have held public office. DeEtta and I have always been active supporters of many organizations that are for the betterment of the communities in which we have lived and continue to do so. The Hunters have contributed time, money and energy to charitable, religious and civic organizations. DeEtta Hunter served not only as the first female Mayor of Lewisburg but also as a Member of City Council. She was a member of the Governor's Commission on the Arts for 13 years.[Hrg. Tr. at 344-350]

11. I admit I made mistakes in handling the Peter's matter and it became marital issue. It is ironic that I happened to read my Horoscope while attempting to finalize the

filing of Proposed Findings of Fact with the Hearing Panel² I do not control the situation now that is a matter for the Court.

12. I had hoped to retire, but this matter has prevented that. As the Office of Disciplinary Counsel told me that I would have to agree to disbarment to do so. I do not want to die with that on my record.

C. CONCLUSIONS OF LAW

A most recent case Lawyer Disciplinary Bd. v. Schillace (W. Va. 2022) "No. 20-0233 clearly sets forth the legal issues in these matters. It's syllabus points are as follows:

" 1. "A de novo standard applies to a review of the adjudicatory record made before the [Hearing Panel Subcommittee of the Lawyer Disciplinary Board ("HPS")] 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 [HPS's] recommendations while ultimately exercising its own independent judgment. On the other hand, substantial deference is given to the [HPS's] findings of fact, unless such findings are not supported by reliable, probative, and substantial evidence on the whole record." Syllabus Point 1, LDB v. Cain, 245 W.Va. 693, 865 S.E.2d 95 (2021) (quoting Syl. Pt. 3, Comm. on Legal Ethics v. McCorckle, 192 W.Va. 286, 452 S.E.2d 377 (1994)).

² "Regardless of how you feel today, it is important for you to own up to your mistakes. Keep in mind that you are always responsible for your actions. No matter how much you might want to shrink away, it is important for you to stand up and admit your weaknesses. Take bold action today in which you command control of the situation and hold yourself responsible for the consequences that ensue."

2. "This Court is the final arbiter of legal ethics problems and must make the ultimate decisions about public reprimands, suspensions, or annulments of attorneys' licenses to practice law." Syllabus Point 2, *LDB v. Cain*, 245 W.Va. 693, 865 S.E.2d 95 (2021) (quoting Syl. Pt. 3, *Comm. on Legal Ethics v. Blair*, 174 W.Va. 494, 327 S.E.2d 671 (1984)).

3. "Rule 3.16 of the West Virginia Rules of Lawyer Disciplinary Procedure enumerates factors to be considered in imposing sanctions and provides as follows: (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, *Off. Law. Disc. Couns. v. Jordan*, 204 W.Va. 495, 513 S.E.2d 722 (1998).

4. "Aggravating factors in lawyer disciplinary proceedings are any considerations or factors that may justify an increase in the degree of discipline to be imposed." Syllabus Point 4, *LDB v. Scott*, 213 W.Va. 209, 579 S.E.2d 550 (2003).

5. "In deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession." Syllabus Point 3, *Comm. on Legal Ethics v. Walker*, 178 W.Va. 150, 358 S.E.2d 234 (1987) (citing W.Va. R. Law. Disc. P. 3.16).

II. SUMMARY OF ARGUMENT

The Hearing Panel Subcommittee of the Lawyer Disciplinary Board (hereinafter "HPS") found that Respondent committed violations of the Rules of Professional Conduct. The HPS recommended that Respondent's law license be suspended one (1) year pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure; that Respondent complete an additional nine (9) hours of continuing legal education prior to reinstatement, during the current reporting period, three (3) hours of which should be in IOLTA accounts and the other six (6) hours of ethics and office management; that Respondent must comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure; that Respondent be permitted to Petition the Court for Reinstatement following one (1) year suspension pursuant to year supervised probation following the Reinstatement, if any; and that Respondent be ordered to reimburse the Lawyer Disciplinary Board the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

The Respondent has admitted violations of the Rules of Professional Conduct and he agrees that some discipline is required, but, he concurs with Justice Wooten's description in Schillace : ". . . the draconian penalty imposed on the respondent, Gregory H. Schillace – a penalty which is, in practical effect, the death penalty for this solo practitioner's career". I also agree with Judge Wooten's conclusion; ". . . (U)nder the facts and circumstances of this case, the respondent's ethical violations, although serious, do not warrant putting a wrecking ball to his career and livelihood."

The Respondent denies that he acted in an intentional and knowing manner My negligent and overzealous acts may have caused potential injury. Nevertheless, the funds were returned, arguably not timely, Mr. Raymond Peters has died and Ms

Bordonaro still lives on the property in the house constructed for her by Raymond Peters. By adopting the recommendations of the HPS as to the sanction in that matter, this Court will be ending a long career that has served thousands of clients without harm.. Hunter agrees, in full hindsight that they may warrant a sanction of lesser magnitude.

Hunter agrees to the additional ethical training proposed, to payment of reasonable costs of this proceeding, but, asks that he be on probation for period and supervised practice. This would allow me wind down my practice and sell my office.. Otherwise, several matters may not be timely completed.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Office of Disciplinary Counsel did not object to oral argument in this matter. The Respondent requests the right to oral argument and to stand questioning by the court.

IV. ARGUMENT

The Scott court adopted mitigating factors in lawyer disciplinary proceedings and stated that 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).

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 to make restitution or to rectify consequences of misconduct; (5) full

and free disclosure to disciplinary board or cooperative attitude toward proceedings; (6) experience 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.

I clearly understand that they that did not envision mitigating factors to insulate a violating lawyer from discipline. The HPS found that Respondent had shown (5), (7), and (12) of the factors, above, for mitigation purposes. There is no evidence that I had a dishonest or selfish motive. The matter moved in a timely fashion. I only sought a short delay while trying to resolve my insurance coverage. Respondent admitted to transgressions at the hearing in this matter and participated with respect to the process, itself. Respondent testified at hearing as to his own character, that he has had a small-town practice that has benefitted the local communities he has lived in and its citizens for many years. He has been active on civic boards and participated in many fundraising activities for development of many social programs in the community; Hunter currently serves Greenbrier County as its Fiduciary Commissioner [Hrg. Tr. at 342-35] and has done so since 1989. Additionally, the HPS found that he had shown and displayed remorse with respect to his professional actions and inactions regarding his representation.

Unfortunately, both DeEtta and I allowed our moral obligations to overtake our ethical obligations. It has been done. So be it. I am and have always been a strong advocate for those I have felt were being taken advantage of by family members or others in their life.

I feel that the rules for disciplinary procedure need a mediation provision to help avoid the adversarial atmosphere. Most all other procedures have room for negotiation settlement and mediation. I have been in many cases, but this was one of the most adversarial proceedings, I have encountered in fifty years. The records are voluminous and as a solo practitioner very intimidating to manage,

The records will show that I have attended most all the regional bar meetings In Beckley where they discuss ethic topics. One dealt with letters of representation, that I recall was enlightening and meaningful. It would have been applicable in this matter and has helped me to better inform clients in writing of what they might expect of them as litigation or negotiations continue.

CONCLUSION

The recommendation of the Hearing Panel should be rejected and a more appropriate sanction, if any, be Ordered by the Court to allow me to finish my law practice and enjoy retirement. Again, I am afraid my wife and I allowed our moral obligations to interfere with my ethical obligations. In the more than 2 years this has proceeded we have changed our procedures to prevent another occurrence. We have both gained valuable insight.

Respectfully submitted this the 2nd day of May 2023.



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CERTIFICATE OF SERVICE

This is to certify that I, J. Steven Hunter, have this day, the 2nd day of May, 2023 served a true copy of the foregoing J. STEVEN HUNTER BRIEF, upon Kristin P. Halkias, by mailing the same via United States Mail, with sufficient postage, to the following address:

Kristin P. Halkias, Esq.
Office of Disciplinary Counsel
West Virginia Judicial Tower, Suite 1200
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Charleston, WV 25304



J. Steven Hunter