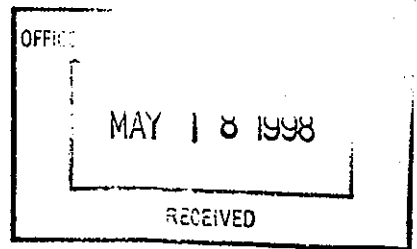


STATE OF WEST VIRGINIA



At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 14th day of May, 1998, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 24795

Michael C. Farber, a suspended member of
The West Virginia State Bar, Respondent

On a former day, to-wit, May 1, 1998, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by David J. Romano, its chairperson, and presented to the Court a joint proposed Stipulation of Fact, Conclusions of Law, and Recommended Discipline, agreed to by the complainant, the Lawyer Disciplinary Board, and the respondent, Michael C. Farber, for violating Rule 8.1 of the Rules of Professional Conduct. The parties agreed to the following sanctions: (1) respondent be admonished; (2) for a period of five years respondent will respond to any ethics complaint made against him to the Office of Disciplinary Counsel prior to Disciplinary Counsel's sending a second letter. Disciplinary Counsel agrees to wait at least thirty days from when respondent should have responded to the first letter (i.e., forty days from two business days after the date of the first letter, as lawyers have ten days to respondent). All complaints shall be copied to respondent's supervisor, as yet unnamed, during the two-year period of supervision ordered by the Supreme Court of Appeals in a prior disciplinary matter. After

Re: 97-02-036

97-02-037

97-02-317

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completion of the supervision period, respondent may nominate any other attorney to receive copies. If during this five-year period respondent fails to respond without good cause before the second letter is sent, upon proof of this failure to the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, respondent's license to practice law in the State of West Virginia shall be suspended for a period of three months; (3) respondent shall reimburse the Lawyer Disciplinary Board for any costs or expenses incurred in the investigation of this matter; (4) neither party will use this agreement for any purpose in respondent's reinstatement proceeding, Supreme Court Case No. 24990. The following guidance is offered: (1) the Office of Disciplinary Counsel should make reasonable efforts to assure that the respondent receives any such ethics complaints. Although there is no requirement that the complaints be sent certified mail, Disciplinary Counsel should use this method of communication if it will be beneficial. The respondent should not instruct his secretary to fail to accept and sign for this certified mail. If respondent is out of the office, he should stay in contact with his staff to find out what mail has been received. If the respondent is out of state for three or four weeks, his secretary should send the Office of Disciplinary Counsel a letter to that effect. Some communication to the Office of Disciplinary Counsel needs to be made if there is good cause for not being able to respond within forty days. The respondent will need to exercise good judgment as to when he needs additional time to respond to an ethics complaint.

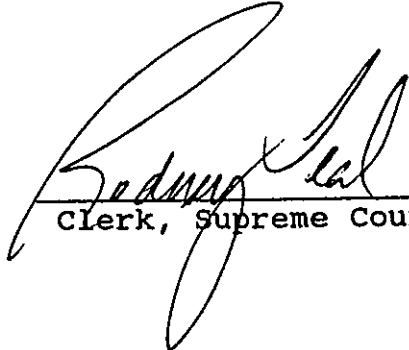
Upon consideration whereof, the Court is of opinion

to and doth hereby approve the aforesaid Stipulation of Fact, Conclusions of Law, and Recommended Discipline, agreed to by the complainant, the Lawyer Disciplinary Board, and the respondent, Michael C. Farber, for violating Rule 8.1 of the Rules of Professional Conduct. It is therefore ordered that the respondent be, and he hereby is, admonished. It is further ordered that for a period of five years respondent shall respond to any ethics complaint made against him to the Office of Disciplinary Counsel prior to Disciplinary Counsel's sending a second letter. Disciplinary Counsel agrees to wait at least thirty days from when respondent should have responded to the first letter (i.e., forty days from two business days after the date of the first letter, as lawyers have ten days to respondent). All complaints shall be copied to respondent's supervisor, as yet unnamed, during the two-year period of supervision ordered by the Supreme Court of Appeals in a prior disciplinary matter. After completion of the supervision period, respondent may nominate any other attorney to receive copies. If during this five-year period respondent fails to respond without good cause before the second letter is sent, upon proof of this failure to the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, respondent's license to practice law in the State of West Virginia shall be suspended for a period of three months. It is further ordered that respondent reimburse the Lawyer Disciplinary Board for any costs or expenses incurred in the investigation of this matter. It is further ordered that neither party use this agreement for any purpose in respondent's reinstatement proceeding, Supreme Court Case No. 24990. It is

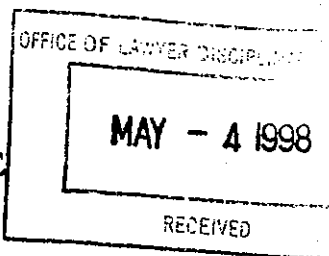
finally ordered that the following guidance be adhered to: (1) the Office of Disciplinary Counsel make reasonable efforts to assure that the respondent receives any such ethics complaints. Although there is no requirement that the complaints be sent certified mail, Disciplinary Counsel should use this method of communication if it will be beneficial. The respondent should not instruct his secretary to fail to accept and sign for this certified mail. If respondent is out of the office, he should stay in contact with his staff to find out what mail has been received. If the respondent is out of state for three or four weeks, his secretary should send the Office of Disciplinary Counsel a letter to that effect. Some communication to the Office of Disciplinary Counsel needs to be made if there is good cause for not being able to respond within forty days. The respondent will need to exercise good judgment as to when he needs additional time to respond to an ethics complaint.

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

A True Copy


Clerk, Supreme Court of Appeals

**BEFORE THE HEARING PANEL SUBCOMMITTEE
OF THE LAWYER DISCIPLINARY BOARD**



Re: MICHAEL C. FARBER, a suspended member of
The West Virginia State Bar

I.D. No.: 97-02-036, 97-02-037
& 97-02-317
Supreme Court No.: 24795

AGREED ORDER

On April 3, 1998, a hearing was held in this disciplinary matter at the Office of Disciplinary Counsel. Present were Subcommittee Members David J. Romano, Chairman, C. Blaine Myers and Debra Sullivan. Respondent Michael C. Farber was present in person and was representing himself. The Office of Disciplinary Counsel was represented by Sherri D. Goodman, Chief Lawyer Disciplinary Counsel. The Subcommittee reviewed ODC Exhibits 1 through 21 over the objections of Respondent with respect to the timeliness of ODC Exhibit 21. The Subcommittee also heard the character testimony of Attorney General Darrell V. McGraw, Jr. on behalf of Respondent.

After breaking for lunch and discussions between Respondent and Disciplinary Counsel, the parties announced that they had reached an agreement with respect to proposed stipulations of fact, conclusions of law and recommended discipline. Upon hearing the proposed settlement, the Subcommittee conferred and approved of the proposal which it adopted as set forth herein.

FINDINGS OF FACT

Count I

1. The Office of Disciplinary Counsel sent a letter to Respondent on February 13, 1997, forwarding the ethics complaint of Marie Counts and requesting a response within 10 days, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure.

2. Respondent did not file a response. The Office of Disciplinary Counsel sent another letter on March 31, 1997 seeking a response by April 14, 1997.

3. On May 20, 1997, Respondent wrote the Office of Disciplinary Counsel stating that his response to this complaint would be forthcoming no later than May 22, 1997.

4. On May 23, 1997, Respondent sent a letter to the Office of Disciplinary Counsel stating that he could not do the Counts' response justice because his children were badgering him to leave for Baltimore to see the national lacrosse championships.

5. On June 19, 1997, Respondent sent a letter to the Office of Disciplinary Counsel by facsimile stating that he had delayed filing a response to the Counts' complaint. He sought an extension to June 23, 1997. He stated that when Mrs. Counts had picked up her file, he did not make any copies and it had taken time to reassemble the necessary documents.

6. The Office of Disciplinary Counsel agreed to refrain from causing a subpoena to be issued requiring Mr. Farber to respond to the disciplinary complaint in-person until June 24, 1997.

7. A response was received by the Office of Disciplinary Counsel from Respondent on June 26, 1997.

Count II

8. The Office of Disciplinary Counsel sent a letter to Respondent on February 13, 1997 requesting a response within 10 days, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure.

9. Respondent did not file a response. On March 31, 1997, the Office of Disciplinary Counsel sent Mr. Farber a second letter asking him to respond by April 14, 1997.

10. Respondent sent his response, without verification, by facsimile transmission on May 21, 1997. He later sent a verification.

Count III

11. The Office of Disciplinary Counsel sent a letter to Respondent on August 26, 1997 requesting a response to the ethics complaint filed by William E. Sattler within 10 days, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure.

12. Respondent did not file a response. The answer Respondent filed to the Statement of Charges on March 13, 1998 contained an answer to the Sattler complaint.

* * *

13. The parties stipulated that the Investigative Panel of the Lawyer Disciplinary Board did not find probable cause with respect to the two underlying ethics complaints filed by Mrs. Counts and Mr. Nice. It did not review the substantive complaint filed by Mr. Sattler because Respondent had not yet provided an answer when the Investigative Panel reviewed these cases. Therefore, the Hearing Panel did not consider any evidence relating to the underlying ethics complaints, and the Statement of Charges did not allege that Respondent committed any unethical conduct in his representation of these three clients.

CONCLUSIONS OF LAW

Respondent acknowledges that he violated Rule 8.1(b) of the Rules of Professional Conduct, which provides in pertinent part as follows:

Rule 8.1. Bar admission and disciplinary matters.

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

* * *

(b) . . . knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

RECOMMENDED DISCIPLINE

The parties agree to the following sanctions:

(a) Respondent will be admonished by the Supreme Court of Appeals.

(b) For a period of five years from the date of the Supreme Court of Appeals' approval, if given, of this stipulation, Respondent will respond to any ethics complaint made against him to the Office of Disciplinary Counsel prior to Disciplinary Counsel's sending a second letter. Disciplinary Counsel agrees to wait at least thirty days from when Respondent should have responded to the first letter (i.e., forty days from two business days after the date of the first letter, as lawyers have ten days to respond). All complaints shall be copied to Respondent's supervisor, as yet unnamed, during the two year period of supervision ordered by the Supreme Court in a prior disciplinary matter. After completion of the supervision period, Respondent may nominate any other attorney to receive copies. If during this five year period Respondent fails to respond without good cause before the second letter is sent, upon proof of this failure to the Hearing Panel, Respondent shall be suspended from the practice of law for three months.

(c) Respondent shall pay the costs of these proceedings.

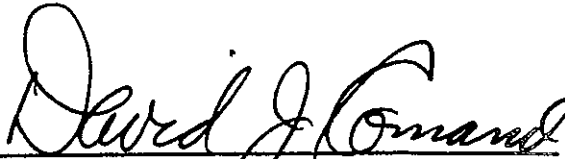
(d) Neither party will use this agreement for any purpose in Respondent's reinstatement proceeding, Supreme Court No. 24990.

The Subcommittee added to these stipulations the following guidance. The Office of Disciplinary Counsel should make reasonable efforts to assure that Mr. Farber receives any such ethics complaints. Although there is no requirement that the complaints be sent certified mail, Disciplinary Counsel should use this method of communication if it will be beneficial. Respondent should not instruct his secretary to fail to accept and sign for this certified mail. If he is out of the office, he should stay in contact with his staff to find out what mail has been received. If Respondent


is out of state for three or four weeks, his secretary should send the Office of Disciplinary Counsel a letter to that effect. Some communication to the Office of Disciplinary Counsel needs to be made if there is good cause for not being able to respond within forty days. Respondent will need to exercise good judgment as to when he needs additional time to respond to an ethics complaint. It is the opinion of the Subcommittee that attending the lacrosse championships, as set forth in ODC Exhibit 5, was not good cause.

It is the Hearing Panel Subcommittee's hope that Respondent will move past his negative attitude towards the disciplinary system and go forward with his professional life whatever the outcome of his reinstatement proceedings.


ENTERED this 1st day of ^{May}~~April~~, 1998.


David J. Romano, Chairperson
Hearing Panel Subcommittee

Prepared by:


Sherri D. Goodman
Office of Disciplinary Counsel

Inspected by:


Michael C. Farber
Respondent
*as to form only with regard
to Paragraph No. 13*

**BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**

Re: MICHAEL C. FARBER, a suspended member of
The West Virginia State Bar

I.D. No.: 97-02-036, 97-02-037
& 97-02-317

STATEMENT OF CHARGES

YOU ARE HEREBY notified that a Hearing Panel Subcommittee of the Lawyer Disciplinary Board will hold a hearing pursuant to Rules 3.3 through 3.16 of the Rules of Disciplinary Procedure, upon the following charges against you:

COUNT I - I.D. No. 97-02-036

1. Michael C. Farber is a lawyer who is currently suspended from the practice of law, but who has maintained an office in Sutton, Braxton County, West Virginia, and, as such, is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board. Respondent was admitted to The West Virginia State Bar on May 17, 1983.
2. The Office of Disciplinary Counsel received a verified complaint against Respondent from Marie K. Counts on January 14, 1997.
3. Ms. Counts alleged that she had paid Respondent \$1500.00 to represent her husband in a parole hearing, but he would not return telephone calls; he canceled appointments after she had already left home to attend them; he had caused her husband's parole date to be moved back; and, he had only written two or three letters on her husband's behalf.

4. The Office of Disciplinary Counsel sent a letter to Respondent on February 13, 1997, forwarding the complaint and requesting a response within 10 days, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure.

5. Respondent did not file a response.

6. The Office of Disciplinary Counsel sent another letter on March 31, 1997 seeking a response by April 14, 1997.

7. On May 20, 1997, Respondent wrote the Office of Disciplinary Counsel stating that his response to this complaint would be forthcoming no later than May 22, 1997.

8. On May 23, 1997, Respondent sent a letter to the Office of Disciplinary Counsel stating that he could not do the Counts' response justice because his children were badgering him to leave for Baltimore to see the national lacrosse championships.

9. On June 19, 1997, Respondent sent a letter to the Office of Disciplinary Counsel by facsimile stating that he had delayed filing a response to the Counts' complaint. He sought an extension to June 23, 1997. He stated that when Mrs. Counts had picked up her file, he did not make any copies and it had taken time to reassemble the necessary documents.

10. However, Mrs. Counts had complained that when she came to pick up the file, she was kept waiting several hours for Respondent's secretary to obtain specific permission from Mr. Farber to release the file and then to copy the file.

11. The Office of Disciplinary Counsel agreed to refrain from causing a subpoena to be issued requiring Mr. Farber to respond to the disciplinary complaint in-person until June 24, 1997.

12. A response was received by the Office of Disciplinary Counsel from Respondent on June 26, 1997.

13. Respondent violated Rule 8.1(b) of the Rules of Professional Conduct, which provides in pertinent part as follows:

Rule 8.1. Bar admission and disciplinary matters.

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

* * *

(b) . . . knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

COUNT II - LD. No. 97-02-037

14. The allegations contained in Paragraph No. 1 are realleged and incorporated herein.

15. The Office of Disciplinary Counsel received a complaint from Peter Nice on January 23, 1997.

16. The Complaint alleged that Mr. Farber would not seek a contempt action regarding Mr. Nice's lack of visitation with his children. As part of Mr. Nice's ethics complaint, he sought a partial refund and a return of his papers.

17. The Office of Disciplinary Counsel sent a letter to Respondent on February 13, 1997 requesting a response within 10 days, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure.

18. Respondent did not file a response.

19. On March 31, 1997, the Office of Disciplinary Counsel sent Mr. Farber a second letter asking him to respond by April 14, 1997.

20. Respondent finally sent his response, without verification, by facsimile transmission on May 21, 1997. He later sent a verification.

21. For failing to respond to Disciplinary Counsel's request for information promptly as set forth in this Count, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct.

COUNT III - I.D. No. 97-02-317

22. The allegations contained in Paragraph No. 1 are realleged and incorporated herein.

23. The Office of Disciplinary Counsel received a complaint from William E. Sattler on June 30, 1997. Mr. Sattler had originally retained attorney Ernest V. Morton and his then associate, Respondent, to pursue various legal remedies stemming from the destruction of Mr. Sattler's business property by arson committed by law enforcement officials.

24. Mr. Sattler alleged that Respondent had let the statute of limitations expire on some particulars of the case; that Respondent had not written his client to apprise him of the status of his case in the last two years; and that Respondent had failed to provide the client with certain documentation as requested on June 2, 1997 concerning the status of the client's litigation.

25. The Office of Disciplinary Counsel sent a letter to Respondent on August 26, 1997 requesting a response within 10 days, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure.

26. Respondent did not file a response.

27. For failure to respond to Disciplinary Counsel as set forth in this Count, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct as set forth above.

AGGRAVATING FACTORS

28. As an aggravating factor with respect to all three counts, Respondent has been the subject of disciplinary sanctions on three occasions.

29. Most recently, Respondent's law license was suspended for four months beginning August 8, 1997 for violation of the attorney/client privilege. *Lawyer Disciplinary Board v. Michael C. Farber*, No. 23344 (W. Va. 6/2/97).

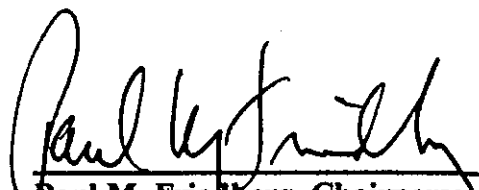
30. Respondent's law license was suspended for three months for falsely accusing a Circuit Judge of criminal acts and other conduct in *Committee on Legal Ethics v. Farber*, 185 W. Va. 522, 408 S.E.2d 274 (1991). The Court also ordered Mr. Farber to be supervised in his law practice for two years upon reinstatement of his law license.

31. Respondent's failure to adhere to the terms of supervision once he was reinstated and his failure to make installment payments for court awarded costs to The West Virginia State Bar led the Court to extend Respondent's period of supervision for an additional 18 months. *Committee on Legal Ethics v. Michael C. Farber*, 191 W. Va. 667, 447 S.E.2d 602 (1994).

* * *

Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a violation of the Rules of Professional Conduct and has issued this Statement of Charges. As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 30 days of service of this Statement of Charges by the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

DATED this 16th day of December, 1997.


Paul M. Friedberg, Chairperson
Investigative Panel
Lawyer Disciplinary Board