

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 21st day of January, 1998, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 23811

Jesse O'Dell Guills, Jr., a member of The West Virginia State Bar, Respondent

On a former day, to-wit, January 20, 1998, came the complainant, the Lawyer Disciplinary Board, by Amie L. Johnson, Lawyer Disciplinary Counsel, and also came the respondent, Jesse O'Dell Guills, Jr., a member of The West Virginia State Bar, by King, Allen, Guthrie & McHugh, Robert B. Allen and Nicholas P. Mooney, II, his attorneys, and presented to the Court their joint motion in writing for leave to withdraw the objection filed by the respondent on the 16th day of October, 1997, to the Stipulated Findings of Fact, Conclusions of Law and Recommended Discipline filed by the Hearing Panel Subcommittee of the Lawyer Disciplinary Board on the 29th day of September, 1997, and for the Court's adoption of said Stipulated Findings of Fact, Conclusions of Law and Recommended Discipline stipulating to the following: Respondent (1) be admonished; (2) continue supervision of practice of law for one and one-half years; (3) continue therapy and counselling for a minimum of six months; and (4) for five years, if an ethics complaint is filed respondent agrees to respond to said complaint 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; any complaints to be copied to Robert B. Allen, Esq., during this five-year period; upon failure of respondent to respond without good cause before the second letter is sent, and upon proof of such failure, respondent shall be suspended from the practice of law in the State of West Virginia for three months.

Upon consideration whereof, the Court is of opinion to and doth hereby adopt the Stipulated Findings of Fact Conclusions of Law and Recommended Discipline in the above-captioned proceeding. It is therefore ordered that respondent be, and he hereby is admonished; respondent's practice of law shall be supervised for one and one-half years; respondent shall continue therapy and counselling for a minimum of six months; and respondent shall, for five years, if an ethics complaint is filed respond to said complaint prior to Disciplinary Counsel's sending a second letter; Disciplinary Counsel shall wait at least thirty days from when respondent should have responded to the first letter; any complaints shall be copied to Robert B. Allen, Esq., during this five-year period; and upon failure of respondent to respond without good cause before the second letter is sent, and upon proof of such failure, respondent shall be suspended from the practice of law in the State of West Virginia for three months, for violation of Rules 1.3, 1.4 and 8.1, Rules of Professional Conduct. It is further ordered that the effective date of this order be, and it hereby is, February 21, 1998.

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

A True Copy

Attest:

A handwritten signature in cursive script, appearing to read "Rodney J. ...", written over a horizontal line.

Clerk, Supreme Court of Appeals

BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

LAWYER DISCIPLINARY BOARD,

FILED

Complainant,

JAN 20 1998

V.

RUDNEY A. TEAL
CLERK OF THE SUPREME COURT OF
APPEALS OF WEST VIRGINIA
Sup. Ct. No. 23871
I.D. No. 96-01-043

JESSE O'DELL GUILLS, JR.,

Respondent.

JAN 22

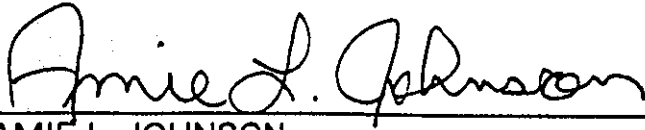
**JOINT MOTION TO WITHDRAW OBJECTION
AND REQUEST THAT THE HEARING PANEL SUBCOMMITTEE'S
RECOMMENDATIONS BE ADOPTED**

Now comes the Office of Disciplinary Counsel and the Respondent, by counsel, to file this joint motion to withdraw the Respondent's previously filed "Objection of Jesse O. Guills, Jr. to the Hearing Panel Subcommittee Report." The parties jointly request that this Court adopt the recommendations made by the Hearing Panel of the Lawyer Disciplinary Board in the "Hearing Panel Subcommittee Report."

If this Court adopts the recommendations of the Hearing Panel, the parties request that the February 17, 1998, oral argument be cancelled. However, if this Court does not wish to adopt the Hearing Panel Subcommittee's recommendations, the parties desire to proceed with oral argument.

Respectfully submitted,

On Behalf of the Office of Disciplinary Counsel
and the Lawyer Disciplinary Board:



AMIE L. JOHNSON
DISCIPLINARY COUNSEL
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900 Lee Street, East
Charleston, West Virginia 25301
(304) 558-7999

On Behalf of the Respondent, Jesse O'dell Guills:



ROBERT B. ALLEN
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SEP 29 1997

In re:*Jesse O'Dell Guills, Jr.*, a member of
The West Virginia State Bar

NOV 14 1997

RODNEY A. TEAL
CLERK OF THE SUPREME COURT OF
APPEALS OF WEST VIRGINIA
L.D. No. 96-01-003
Sup. Ct. No. 23811

HEARING PANEL SUBCOMMITTEE REPORT

The Hearing Panel Subcommittee, having reviewed the Stipulated Findings of Fact, Conclusions of Law, and Recommended Discipline of the parties in this matter, does find them to be acceptable and hereby adopts the same, as follows:

FINDINGS OF FACT

1. Jesse O'Dell Guills (hereinafter "Respondent") is a lawyer practicing in Lewisburg, Greenbrier 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 Bar on May 17, 1971.

2. A Statement of Charges was filed in this case with the West Virginia Supreme Court of Appeals on October 30, 1996.

GENERAL LEWIS HOTEL, INC. V. RODNEY D. FISHER

3. On or about March 31, 1993, Mr. James and Mrs. Mary Morgan retained Respondent to represent the General Lewis Inn, in Lewisburg, West Virginia. The representation was to attempt to recover funds from a former employee, Rodney Fisher, whom they alleged had misappropriated funds. The Morgans believed that Mr. Fisher had diverted supplies purchased on behalf of the General Lewis for his own use and sought reimbursement for purchases made on his own credit card for items allegedly used by the General Lewis Inn but which had, in fact, been for his personal use. At the time they hired the Respondent, the Morgans were unclear as to how much money they were owed.

4. In July of 1993 Respondent filed a civil action against Mr. Fisher on behalf of the General Lewis Inn.

5. In July 1993, on behalf of the General Lewis, Respondent filed a petition for prejudgment attachment of any proceeds from the sale of Mr. Fisher's house, because they had learned that Mr. Fisher was selling his house and moving from the area. The parties agreed to an Order of attachment that in the event Mr. Fisher sold his house, the net proceeds from the sale, not to exceed \$25,000.00, would be attached and escrowed "pending final resolution of the underlying action to secure a final judgment."

6. On August 16, 1993, Respondent received a check in the amount of \$9,353.26 from the proceeds of the sale of Mr. Fisher's house. He deposited these funds in his escrow account.

7. During 1994, Respondent made a request of Mr. Fisher's attorney, Mr. Hunter, for the release of information pertaining to Fisher's credit card bills from the years 1990 through 1992.

During this time, the Morgans and the Respondent were trying to determine the amount actually owed by Mr. Fisher. Respondent had a brief discussion in September 1994 with Mr. Hunter about moving the case along, and he followed up that conversation with a letter to Mr. Hunter.

8. A pretrial conference was scheduled for November 3, 1994. Mr. Hunter agreed at that pretrial conference that his client would admit liability. The amount of money owed by Mr. Fisher was not part of the stipulation. On November 7, 1994, Respondent wrote a letter to Ms. Nancy Morgan, who had begun to work as manager for the General Lewis Inn in February 1994, giving her an update.

9. On January 4, 1995, Respondent wrote a check to the General Lewis Inn in the amount of \$9,203.26 representing the remainder of the proceeds from Mr. Fisher's house sale. (After the closing, an error in the settlement documents had been discovered and Respondent had written a check for \$150.00 out of the funds held in escrow.)

10. On February 3, 1995, Mr. Hunter sent Respondent a check for \$6,000.00 as an additional payment from Mr. Fisher.

11. During approximately the same time that Mr. Fisher paid the additional \$6,000.00, Mr. Fisher also, through counsel, agreed to confess judgment in the amount of \$25,000.00. The parties did not agree on a payment plan for the balance owed.

12. Nancy Morgan would testify that during this time she made many calls to Respondent which were not returned.

13. On April 7, 1995, James Morgan met with Respondent. Mr. Morgan would testify that he scheduled this appointment because of Respondent's failure to return Nancy Morgan's telephone calls. Respondent and James Morgan discussed the fact that Mr. Fisher had sent a check for \$50.00 to the Inn noting "1 of 196" payments. Mr. Morgan was dissatisfied with these payments and requested that Respondent obtain a different payment schedule.

14. Hearing nothing further from Respondent, Mr. Morgan wrote to Respondent on July 18, 1995, stating that he would file a formal complaint with the Lawyer Disciplinary Board unless he heard from Respondent by July 19, 1995. Mr. Morgan's letter indicated that he and his daughter Nancy had made numerous calls to Respondent, and Mr. Morgan had made personal trips to Respondent's office, but that Respondent had never responded to them. Mr. Morgan wanted Respondent to contact Fisher's attorney, Mr. Hunter, to arrange for a reasonable payment plan, and he also wanted Respondent to file the necessary court papers so that interest could be assessed on the unpaid balance.

15. Respondent wrote on July 19, 1995, and stated that he had been in contact with Mr. Fisher's lawyer and that Mr. Fisher could pay no more than \$50.00 per month. Respondent stated he would have ready for Judge Lobban's signature a confession of judgment order by Tuesday of the following week. Respondent advised that the entry of a confessed judgment order would then

allow the Morgans to take various steps to collect the balance, such as wage garnishment, property execution, etc.

16. This order was not presented to the Court as promised.

17. On January 24, 1996, Beverly A. Crosson, a Lewisburg attorney, had a conversation with Respondent in his office. Ms. Crosson is a personal friend of the Morgans, and was also their attorney in another matter. Ms. Crosson understood that the Morgans wanted her to raise the Rodney Fisher matter with Respondent. Respondent explained that Fisher had agreed to a confession of judgment for \$25,000, of which \$15,200 had already been paid, with the only issue remaining being how the remaining \$9,800 would be paid. Respondent told Ms. Crosson that he would file the order by the following Monday, and that she could advise the Morgans accordingly.

18. Respondent did not prepare the confession of judgement until after the Statement of Charges in this matter was filed. Respondent filed the confession of judgment on December 17, 1996. The confession of judgment does not contain a payment plan, as a plan was not agreed upon by Fisher and the Morgans.

19. Respondent asserts that he had substantial reservations about his authority to agree to the Order confessing judgment because of his client's concern and insistence on obtaining a payment schedule for the unpaid balance which was higher than \$50 a month.

20. Disciplinary Counsel asserts that the confession of judgment could have been filed without a payment plan, as ultimately did occur, and that the confession of judgment was important for the protection of his client's interests.

21. From July 19, 1995, when he wrote the letter to Mr. Morgan, until after the Statement of Charges was filed in this matter, Respondent did not have any contact with the Morgans or the General Lewis Inn.

22. In March of 1996, Respondent attended a status conference before the Court in the case. On January 8, 1997, Respondent forwarded to James Morgan a copy of the confession of judgment order which had been entered on December 17, 1996. The January 8 letter also informed Morgan that the Respondent would no longer be representing the General Lewis Inn, and advised of possible actions the Inn could take to satisfy the judgment.

23. As an aggravating factor pursuant to Rule 3.16 of the Rules of Lawyer Disciplinary Procedure (hereinafter "RLDP"), Respondent has had prior ethics complaints involving diligence and client communication. The Investigative Panel closed these cases without formal discipline being issued.

a. An August 1990 Investigative Panel Closing Order stated "we would urge Respondent to take greater care in the informing of his clients of the progress of their cases." (I.D. No. 88-060, Complaint of Kim Minks).

b. A November 1990 Investigative Panel Closing Order notes that Respondent was slow in preparing and delivering documents he was commissioned to prepare. (I.D. No. 89-014, Complaint of Walter L. Baker).

c. On July 10, 1992 the Investigative Panel cautioned the Respondent "that Rule 1.4(a) of the Rules of Professional Conduct requires an attorney to keep his clients reasonably informed about the status of their case." (I.D. No. 91-161 Complaint of James and Ada Gregory).

RESPONSE TO DISCIPLINARY COUNSEL

24. On January 24, 1996 the Office of Disciplinary Counsel ("ODC") received the complaint by Nancy Morgan against Respondent in this matter. On February 26, 1996 ODC sent Respondent a letter with a copy of the complaint directing him to send his verified response within ten days. The letter contained the following language:

Please be advised that Disciplinary Counsel considers this request a lawful demand for information within the meaning of Rule 8.1(b) of the Rules of Professional Conduct. Failure

to respond may subject you to disciplinary action. Failure to respond will also be regarded as an admission of the allegations and may form the basis for a Statement of Charges.

25. Respondent did not respond. On March 25, 1996 another letter was sent to Respondent by ODC. That letter advised him that ODC had still not received his response to the complaint and that the matter could not be delayed further. It warned him that if ODC did not hear from him by April 4, 1996 he could be subpoenaed. This form letter contained the following language:

In *Committee on Legal Ethics v. Martin*, 419 S.E.2d 4 (W.Va. 1992), the Court held in pertinent part that (1) an attorney violated West Virginia Rule of Professional Conduct 8.1(b) by failing to respond to requests by the Office of Lawyer Disciplinary Counsel concerning allegations in a disciplinary complaint; and (2) an attorney's failure to respond to a request for information . . . within a reasonable time will constitute an admission to those allegations.

26. Respondent did not respond. On May 22, 1996 ODC obtained a subpoena for Respondent to appear on June 7, 1996 at the Office of Disciplinary Counsel. Respondent was served with the subpoena on May 24, 1996.

27. On June 7, 1996 Respondent did appear according to the subpoena. He gave as his reasons for not responding to the complaint "frustration with this particular matter" and that "I'd really prefer to come in person and give to you what knowledge I have".

28. During the June 7, 1996 appearance, Respondent explained his dealings with the Morgans and the General Lewis Inn. He explained that the opposing party had agreed to confess judgment up to \$25,000, but that a payment plan was not agreed upon. He expressed frustration that the case would be difficult and expensive to prove in trial.

29. Under oath at the June 7, 1996 appearance, Respondent promised to take various actions. These were: sending Disciplinary Counsel and Complainant a verified summary of his actions in Complainant's case; sending Disciplinary Counsel various documents to allow ODC to proceed with the investigation of the complaint; and sending a status letter by June 11, 1996 to Beverly A. Crosson, an attorney which the Morgans had used on other matters.

30. Respondent did not take the promised actions. On July 2, 1996 Disciplinary Counsel wrote to Respondent reminding him to complete such actions and stating:

Your continued refusal to comply with this office is inexcusable. Please be aware that failure to respond to disciplinary counsel in connection to the investigation of a disciplinary complaint can by itself be the basis for further disciplinary action.

Respondent did not respond.

31. At the direction of the Investigative Panel, Panel member E. Kent Hellems, Esq., contacted Respondent on or about August 23, 1996. Respondent promised to comply with Disciplinary Counsel's requests, but because he was busy he would not be able to do so until the following week.

32. There was no further response from Respondent until after the Statement of Charges was filed.

33. As an aggravating factor pursuant to RLDP Rule 3.16, Respondent has been disciplined in the past for failing to timely respond to Disciplinary Counsel.

a. On June 29, 1994 the Investigative Panel admonished Respondent and said in a Closing Order (I.D. No. 92-03-409, Complaint of Joseph Workman):

However, Respondent did violate Rule 8.1(b). Disciplinary Counsel made several unsuccessful requests for a reply to the ethics complaint. In fact, respondent only replied to the ethics complaint after Disciplinary Counsel threatened to subpoena him. Respondent is admonished for not timely replying to a lawful request for information from Disciplinary Counsel and is cautioned to promptly respond to all future inquiries.

b. On April 8, 1995 the Investigative Panel admonished Respondent for failure to comply with the lawful request for information by the Office of Disciplinary Counsel violating Rule 8.1(b). (I.D. No. 92-01-305, Complaint of Michael W. Wise).

CONCLUSIONS OF LAW

34. By failing to prepare a confession of judgment for more than eighteen (18) months, although promising to do so, Respondent violated Rule 1.3 of the Rules of Professional Conduct which states:

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

35. By failing to communicate adequately with his clients Respondent violated Rule of Professional Conduct 1.4(a) which states:

Rule 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

36. By failing to respond to lawful requests for information from the Office of Disciplinary Counsel, Respondent violated Rule 8.1(b) of Professional Conduct which states:

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

MITIGATION

37. Respondent has voluntarily entered into these stipulations with the goal of improving his practice. After the issuance of the Statement of Charges in this matter, Respondent identified his problems and has already taken substantial steps toward correcting them. These include re-organizing his office and implementing certain office procedures. Professor Forrest Bowman has performed, at Respondent's request, a review of Respondent's office, and Respondent is implementing Professor Bowman's recommendations.

38. Respondent has hired another attorney to assist him in his practice.

39. Respondent has experienced problems with depression on and off through the years, including during the times relevant to some prior disciplinary action. Respondent has sought treatment and has agreed to continue treatment for a minimum of six (6) months, pursuant to these stipulations.

40. Respondent is an honest, trustworthy, respected and capable trial lawyer who has built and maintained a solid reputation for integrity and truthfulness among his friends and fellow attorneys.

41. Respondent recognizes that he should have filed the confession of judgment on behalf of the General Lewis Inn sooner, but that he was frustrated in his inability to work out an acceptable payment plan amongst the parties. Respondent was also frustrated in that the case would have been difficult to prove at trial, and he felt that he had done a good job in obtaining the money that the Inn had already received.

42. Respondent's practice allows him to support his family, including his mother-in-law and brother-in-law who reside close to Respondent's home. Respondent's mother-in-law was recently diagnosed as terminally ill, and his brother-in-law is handicapped and has recently suffered serious medical problems. These factors contributed to Respondent's inability to timely respond to ODC's inquiries.

43. Respondent has in the past engaged in many community activities from which has recently withdrawn in order to devote more time to the administrative demands of his law practice.

44. Respondent is extremely remorseful over the events leading to this proceeding, and extends sincere apologies.

45. Respondent regrets that he did not respond to ODC's requests, and believes that because of the depression, his family situation, and the demands of his law practice he put off dealing with his own problems until they reached this stage.

SANCTION

46. The Respondent and Disciplinary Counsel agree that the following sanction serves the multiple purposes of sanctioning Respondent, deterring similar conduct by both Respondent and other lawyers, and improving the delivery of service to Respondent's clients. All time frames referred to below shall begin one (1) month after the Supreme Court of Appeals enters a final order in this case.

The Respondent shall:

a. be issued an admonishment;

b. continue to utilize the office procedures recommended by Professor Bowman, coupled with supervised practice for one and one half (1 1/2) years. The supervisor shall oversee Respondent's implementation of the office practices, and shall be available on a regular basis to advise Respondent. The supervisor shall meet regularly with Respondent. The supervisor must be approved by the ODC, shall file quarterly reports with the ODC, and shall be available to respond to inquiries by the ODC.¹

c. continue with therapy and counselling for a minimum of six (6) months; and

d. for five (5) years, if anyone should file an ethics complaint against Respondent, Respondent agrees to respond to the complaint prior to Disciplinary Counsel's sending a second letter. Disciplinary Counsel agrees to wait at least thirty (30) days from when Respondent should have responded to the first letter (i.e., forty [40] days from the date of the first letter, as lawyers have ten [10] days to respond). All complaints shall be copied to Mr. Robert B. Allen as counsel to Respondent during this five year period. If during this five year period Respondent fails to respond

¹ The parties are currently exploring whether Judge Charles M. Lobban, who is on senior status from the Circuit Court of Greenbrier County, is permitted by the judiciary rules to act as Respondent's supervisor. If he is permitted, the ODC approves of Judge Lobban as the supervising attorney. If Judge Lobban is not permitted or is not available, the parties will seek another attorney to fill this role.

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 (3) months.

Claudia W. Bentley
Claudia W. Bentley, Esquire
Chairperson of the
Hearing Panel Subcommittee

Date: 9 / 24 / 97

Ann E. Snyder
Ann E. Snyder, Esquire

Date: 9 / 19 / 97

Vivan Baumgardner
Vivan Baumgardner

Date: 07 / 23 / 97