

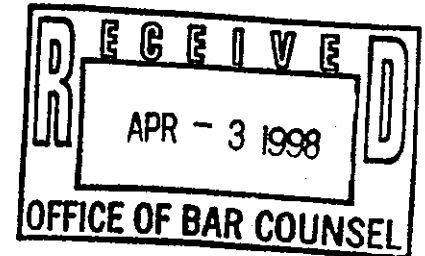
STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 30th day of March, 1998, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 24039

C. Darren Tallman, a member of The West Virginia State Bar, Respondent



On a former day, to-wit, March 31, 1997, came the Investigative Panel of the Lawyer Disciplinary Board, by Paul M. Friedberg, its chairperson, pursuant to Rule 2.10 of the Rules of Lawyer Disciplinary Procedure, and filed a statement of charges with this Court, charging the respondent, C. Darren Tallman, a member of The West Virginia State Bar, with violating Rules 1.3, 1.4(a), and 8.1(a) of the Rules of Professional Conduct.

Thereafter, on the 17th day of December, 1997, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Ann E. Snyder, its chairperson, pursuant to Rule 3.10 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition recommending that the respondent: (1) be admonished; (2) be required to reimburse the Lawyer Disciplinary Board for all costs and expenses incurred in the investigation of this matter; (3) implement an office plan to improve his office systems/practices within two months of this Court's order if not already in use, inform the Office of Disciplinary Counsel of said plan, and provide to the Office of Disciplinary Counsel a descriptive copy of same which shall consist of the following: (a) office systems/practices be utilized by all employees in respondent's office; (b) respondent be required to maintain a system for tracking all telephone calls received and returned; and

(c) all office systems/practices shall be open and available for review by the Office of Disciplinary Counsel, with any confidential information to remain confidential; (4) respondent be required to report to the Office of Disciplinary Counsel within four (4) months from the date of the Court's order on the resolution of the issue relevant to the order entered in the underlying case styled Shipley v. McLoy, Civil Action No. 94-C-378, Circuit Court of Wood County; (5) respondent be required to practice law under the direct supervision of an attorney, in good standing who is licensed to practice law in the State of West Virginia and approved by the Office Disciplinary Counsel, for a period of twelve months effective the date of the Court's order, with said supervising attorney to provide the Office of Disciplinary Counsel with quarterly reports on the progress of the respondent, including, but not limited to the respondent's progress in implementing his plan for systems/practices. In the event the Office of Disciplinary Counsel and the respondent cannot agree on the supervising attorney, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board shall make the decision. The Hearing Panel Subcommittee concluded the respondent violated Rules 1.3 and 1.4(a) of the Rules of Professional Conduct.

Finally, on the 15th day of January, 1998, came the respondent, C. Darren Tallman, by Joseph M. Brown, his attorney, pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court his written response thereto in which he does not object to the aforesaid written recommendations.

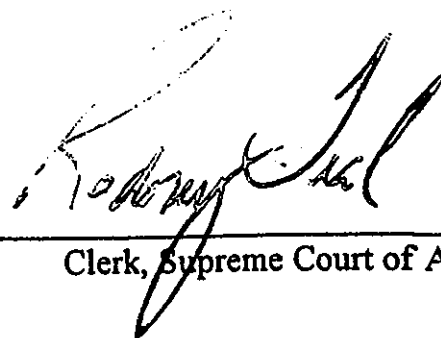
Upon consideration whereof, the Court is of opinion to and doth hereby approve the written recommendations filed by the Hearing Panel Subcommittee of the Lawyer Disciplinary Board. It is therefore ordered that the respondent, C. Darren Tallman, for violation of Rules 1.3 and 1.4(a) of the Rules of Lawyer Disciplinary Procedure: (1) be,

and he hereby is, admonished; (2) reimburse the Lawyer Disciplinary Board for all costs and expenses incurred in the investigation of this matter; (3) implement an office plan to improve his office systems/practices within two months of this order if not already in use, inform the Office of Disciplinary Counsel of said plan, and provide to the Office of Disciplinary Counsel a descriptive copy of same which shall consist of the following: (a) office systems/practices shall be utilized by all employees in respondent's office; (b) respondent shall maintain a system for tracking all telephone calls received and returned; and (c) all office systems/practices shall be open and available for review by the Office of Disciplinary Counsel, with any confidential information to remain confidential; (4) respondent shall report to the Office of Disciplinary Counsel within four (4) months from the date of this order on the resolution of the issue relevant to the circuit court order entered in the underlying case styled Shipley v. McLoy, Civil Action No. 94-C-378, Circuit Court of Wood County; (5) respondent shall practice law under the direct supervision of an attorney, in good standing who is licensed to practice law in the State of West Virginia and approved by the Office Disciplinary Counsel, for a period of twelve months effective the date of this order, with said supervising attorney to provide the Office of Disciplinary Counsel with quarterly reports on the progress of the respondent, including, but not limited to, the respondent's progress in implementing his plan for systems/practices. In the event the Office of Disciplinary Counsel and the respondent cannot agree on the supervising attorney, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board shall make the decision.

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

A True Copy

Attest:



Clerk, Supreme Court of Appeals

OFFICE OF LAWYER DISCIPLINARY COUNSEL
DEC 22 1997
RECEIVED

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

**In re: C. Darren Tallman, a member of
The West Virginia State Bar**

**I.D. No. 96-01-153
Sup. Ct. 24039**

**REPORT AND RECOMMENDATION OF
THE HEARING PANEL SUBCOMMITTEE**

At a hearing held on the 7th day of July, 1997, at which appeared the Respondent, C. Darren Tallman, in person, and his attorney, Joseph M. Brown, and also appeared Amie L. Johnson, Lawyer Disciplinary Counsel, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board consisting of Ann E. Snyder, Chairperson; Allan N. Karlin, Esq.; and Sister Mona Farthing, took evidence from witnesses and received exhibits in the above captioned action. Upon review and consideration of the all of the evidence, the Hearing Panel Subcommittee does make the following findings and recommendations with respect to this matter.

FINDINGS OF FACT

1. Darren C. Tallman (hereinafter "Respondent") is a licensed member of the West Virginia State Bar who practices in Parkersburg, Wood 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. The Respondent was admitted to the West Virginia Bar on May 20, 1986.

2. Respondent represented Gerald and Connie Shipley, Plaintiffs in a civil lawsuit arising out of a car accident. The lawsuit was filed in September 1994 in the Circuit Court of Wood County, Civil Action No. 94-C-378.

3. On October 10, 1995, opposing counsel J. Robert Leslie noticed a deposition of Mrs. Shipley, to be held on December 5, 1995, at 2:00 p.m., at a specific location in Parkersburg. Neither Mrs. Shipley nor the Respondent appeared at the December 5 deposition.

4. On December 8, 1995, Co-Defendent, Evelyn McLoy, represented by Mr. Leslie filed a Motion for Default Judgment against Connie Shipley based upon the missed deposition. A hearing was held on February 8, 1996, before the Honorable Judge Jeffrey B. Reed.

5. At the February 8 hearing, Mr. Leslie informed the Court that he (Leslie) had telephoned the Respondent in advance and they had agreed on the date of Mrs. Shipley's deposition.

6. During the hearing, when the Court asked Respondent why Mrs. Shipley missed her deposition, Respondent answered that he may have received the notice and misplaced it, he wasn't sure. He also answered that it was not on his calendar, and asked the Court not to blame Mrs. Shipley.

7. During the hearing, Respondent called Gerald Shipley to the stand to testify as to why the tax returns had not yet been provided. Respondent did not call Connie Shipley to the stand to testify as to why she missed her scheduled deposition.

8. Judge Reed stated, during the hearing, that he had observed a pattern of behavior by Respondent, wherein Respondent consistently says that he does not receive mail. The Judge based this on three or four other cases before the Court, in addition to the Shipley's case. The

Judge stated that he believed Tallman had received the notice, but had misplaced it, although Tallman may not have done so purposely.

9. From the bench, during the hearing, the Judge ordered the Shipleys to personally pay the costs incurred by defense counsel in filing the Motion for Default Judgment and in attending the February 8, 1996, hearing. The Court also ordered the Shipleys to personally pay defense counsel's attorney fees for their driving to and waiting for Mrs. Shipley's deposition. The Court did not award time spent in preparing for the deposition, as the deposition could not be held at a later time and the preparation was thus beneficial.

10. As directed by the Court, Counsel for Defendant McLoy and third-party Defendant State Farm Mutual Automobile Insurance Company submitted written fee petitions, which the Court approved in a written order entered April 3, 1996.

11. Also at the February 8, 1996, hearing, the Judge granted the Respondent's Motion to Withdraw as the Shipleys' counsel. Because he was no longer counsel, the Respondent was not served with the subsequent written petitions detailing costs or the written order awarding costs.

12. Although the Respondent could not find the deposition notice in his files, he did not deny receiving it.

13. The Respondent did not inform Mrs. Shipley of the deposition date.

14. The Respondent was representing the Shipleys on a contingency fee basis. This arrangement was not in writing, as is required by Rule 1.5(c). This issue was not included in the Statement of Charges, as Disciplinary Counsel only learned of it after the charges were filed. The Respondent voluntarily disclosed this issue in his answer.

15. As an aggravating factor, the Respondent has a prior disciplinary history. In I.D. No. 95-01-114, Complaint of Garland Bryant, Respondent was admonished by the Investigative Panel for failing to timely respond to Disciplinary Counsel's requests for information. In that same complaint, Respondent was warned to better communicate with his clients in the future. In two other Investigative Panel closings, the Respondent was warned to respond to requests for information from Disciplinary Counsel. I.D. No. 95-01-461, Complaint of Shelby J. Taylor; I. D. 95-03-260, Complaint of Nathan L. Goines.

16. The Respondent's problems resulted from the exercise of poor judgment in attempting to engage in full-time employment with the Child Advocate's Office while simultaneously attempting to develop a private practice without any support staff. Given the demands of his position at the Child Advocate's Office and the fact that he was not permitted to do any work on his private practice at the Child Advocate's Office, he certainly should have understood that attempting to develop a private practice could and would lead to precisely the kind of problems that resulted in this case and in other cases identified as aggravating factors in Paragraph 15.

17. The Respondent and others alleged that the clients who brought this complaint were partially responsible for the problem because they failed to produce documents requested for discovery. However, whether these allegations are true or false is irrelevant. Allegations that clients presented some difficulties do not excuse an attorney's failure to notify clients about and/or appear at depositions.

18. As a mitigating factor, between the time he represented the Shipleys and the present, the Respondent has taken several steps to improve his practice:

a) The Respondent terminated his employment with the Department of Human Services as a Child Advocate Attorney in March 1996.

b) The Respondent has equipped a private office and has devoted himself to full-time to his private practice.

c) The Respondent has employed a full-time secretary, who also maintains his schedule.

19. Disciplinary Counsel has confirmed with some Wood County officials that the Respondent's timeliness and work have improved since he left the Child Advocate's Office.

20. As a mitigating factor, it does not appear that the Respondent's violations were intentional. Nonetheless, they resulted from poor judgment and poor organization. Serious breaches of the Rules of Professional Conduct with adverse consequences to clients can arise as easily from poor judgment and poor organization as from intentional wrongdoing. Given the evidence of Mr. Tallman's problems to date, the Committee concludes that, in the absence of a program of mentoring, there is a serious danger that the Respondent will engage in similar conduct in the future.

CONCLUSIONS OF LAW

21. By failing to inform Mrs. Shipley that her deposition was scheduled for December 5, 1995, Respondent violated Rule 1.4(a) of the Rules of Professional Conduct, which provides:

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.

22. By failing to inform Mrs. Shipley that her deposition was scheduled for December 5, 1995, and by himself failing to appear as her counsel, Respondent violated Rule 1.3 of the Rules of Professional Conduct, which provides:

Rule 1.3 Diligence

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

23. There is insufficient evidence to support a finding that the Respondent violated Rule 8.1(a) of the Rules of Professional Conduct. The charge alleges that the Respondent "knowingly" made a false statement of material fact in his response to the ethics complaint. It appears more likely that the answer resulted from negligence rather than from "knowing" misconduct. While the Committee does not find that the Respondent violated Rule 8.1(a), the Committee does express its concern that the Respondent's negligence in his response to the ethics complaint is indicative of the problems that led to this and other charges.

24. The Subcommittee expresses its belief that the Respondent has the potential to be a respected and successful member of the Bar. His extensive pro bono efforts and the complimentary testimony from a representative of the West Virginia Legal Services Plan are compelling. Nonetheless, the Committee remains concerned that the poor judgment and disorganized work habits demonstrated by the Respondent that caused this and other complaints to be filed against him may be repeated in the absence of a period of mentoring from an experienced member of the Bar.

RECOMMENDED DISCIPLINE

25. The Respondent shall receive an admonishment, shall pay the costs of this disciplinary proceeding, and shall implement the office plan which is described in Paragraph

26.

26. The Respondent shall take steps, pursuant to a written plan, to further improve his office systems/practices. Both the Respondent and his secretary, and anyone else working in the office, shall utilize these systems and keep them up-to-date.

a) At the minimum, the Respondent shall implement and/or continue: a tickler system, a calendaring system, and a log or other device for tracking telephone calls received and returned.

b) In addition to the requirements of subparagraph a, the Respondent shall arrange for his malpractice carrier to perform a review of his office practices. The Respondent shall implement all of the reviewer's recommendations.

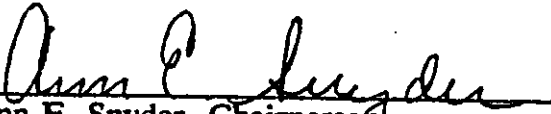
c) The Respondent shall implement these systems/practices, if not already in use, within two (2) months of the order of the Supreme Court, or within two (2) months of the review by the insurance carrier, whichever is sooner. Disciplinary Counsel shall be informed in writing as to what systems/practices have been implemented and shall be given a description of each.

d) These systems/practices shall be open and available for review by Disciplinary Counsel. Any confidential information which Disciplinary Counsel may learn shall remain confidential.


27. From the Court's Order in the case and the discussion at the hearing, it is apparent that the amount of the sanctions assessed against the Respondent's clients was directly related to their failure to attend the deposition. Under these circumstances, the Respondent should take whatever steps are necessary to insure that the Order Entering Judgment on Sanctions is satisfied and/or superseded by another Order indicating that the judgment is no longer valid. While Respondent and others on his behalf have asserted that none of the

Defendants in the case of *Shipley v. McLoy*, Civil Action No. 94-C-378, Circuit Court of Wood County, intends to insist on the payment of the fees awarded in that Order, the Order nonetheless remains valid. Thus, the Respondent must take some steps to insure that the Order cannot be enforceable in any manner in the future. Respondent shall report to the Office of Disciplinary Counsel the means in which he has resolved this issue within four (4) months from the date that this matter becomes final.

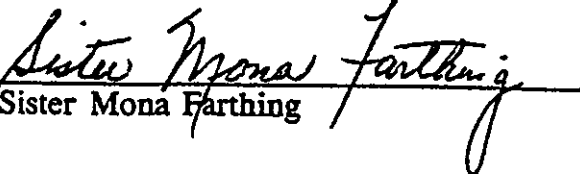
28. The Respondent shall practice law under the direct supervision of an attorney for a period of twelve (12) months beginning on the date that Supreme Court's Order in this matter becomes final. The supervising attorney shall be an attorney in good standing who is licensed within this State. The supervising attorney must be approved by the Office of Disciplinary Counsel. If the Office of Disciplinary Counsel and the Respondent are unable to agree on who the supervisor shall be, this issue shall be submitted to the Hearing Panel Subcommittee for a decision. The supervising attorney shall submit a quarterly report to the Office of Disciplinary Counsel on the progress of the Respondent, including, but not limited to, the Respondent's progress in implementing office practices and communicating with clients.


Ann E. Snyder, Chairperson

Date: 12-10-97


Allan N. Karlin, Esq.

Date: 12/15/97


Sister Mona Farthing

Date: 12-13-97