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. 24673

John Lawler Hash, an active member of
The West Virginia State Bar, Respondent

On a former day, to-wit, November 21, 1997, came the Office of Disciplinary Counsel, by Steven Johnston Knopp, Lawyer Disciplinary Counsel, and presented to the Court, pursuant to Rule 3.20(c), Rules of Lawyer Disciplinary Procedure, a copy of the report filed with the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, in the above-captioned proceeding. Thereafter, on the 6th day of January, 1998, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Ann E. Snyder, its chairperson, pursuant to Rule 3.20(e), and presented to the Court its written recommendations recommending that the respondent, John Lawler Hash: (1) be disbarred; (2) that his license to practice law in the State of West Virginia be annulled; (3) that he be precluded from petitioning for the reinstatement of his license to practice law in the State of West Virginia for at least five (5) years, even if the State Bar of North Carolina should reinstate respondent before that time; and (6) in order for the respondent to have his license to practice law in the State of West Virginia reinstated, he must prove himself rehabilitated within the meaning of In Re: Brown, 273 S.E.2d 567 (W. Va. 1980).

Upon consideration whereof, the Court is of opinion to and doth hereby approve the aforesaid recommendations. It is therefore ordered that the respondent, John

Lawler Hash, (1) be, and he hereby is, disbarred from the practice of law in the State of West Virginia; (2) respondent's license to practice law in the State of West Virginia is hereby annulled; (3) respondent is hereby precluded from petitioning for the reinstatement of his license to practice law in the State of West Virginia for at least five (5) years, even if the State Bar of North Carolina should reinstate respondent's license to practice law in that state before that time; and (6) respondent is hereby required to prove himself rehabilitated within the meaning of In Re: Brown, 273 S.E.2d 567 (W. Va. 1980), in the event he petitions for the reinstatement of his license to practice law in the State of West Virginia.

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

BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA

In re: JOHN LAWLER HASH, a member of The West Virginia State Bar

I.D. No. 97-03-379
Sup. Ct. _____

HEARING PANEL SUBCOMMITTEE REPORT

On November 20, 1997, the Office of Disciplinary Counsel, by Steven Johnston Knopp, filed a report to the Hearing Panel Subcommittee and served said report on John L. Hash, Esq., the Respondent; Ann E. Snyder, Esq., Hearing Panel Subcommittee Chairperson; Claudia W. Bentley, Esq., Hearing Panel Subcommittee Member; and Debra K. Sullivan, Hearing Panel Subcommittee Member, which requested that reciprocal discipline be imposed in I.D. No. 97-03-379. The Hearing Panel having considered said Report, submits the following:

A. Procedural Background

By Order of the Disciplinary Hearing Commission of the North Carolina State Bar, dated August 13, 1997, John L. Hash, was disbarred from the practice of law in North Carolina, effective 30 days from the date of service of the Order upon him. The record does not show any petition by Respondent for readmission to the Bar in that state.

By Order of Disbarment entered September 29, 1997, the United States Court of Appeals for the Fourth Circuit disbarred Respondent from the practice of law before that Court, following his waiver of his right to file and serve an answer or other response to the

Order to show cause why he should not be disbarred. The Fourth Circuit Order is effective until such time Respondent is readmitted to practice in the State of North Carolina and successfully petitions the Court for readmission to the Bar of the Fourth Circuit.

Based upon the above Orders, the Office of Disciplinary Counsel seeks the annulment of Respondent's license to practice law and his disbarment, pursuant to Rule 3.20 of the West Virginia Rules of Lawyer Disciplinary Procedure.

Respondent did not inform the Office of Disciplinary Counsel of the discipline imposed by the Court of Appeals for the Fourth Circuit, in violation of Rule 3.20(a) of the Rules of Lawyer Disciplinary Procedure. The Fourth Circuit Clerk notified the Clerk of the Supreme Court of Appeals of West Virginia by copy of a letter to Respondent dated September 29, 1997. The Order was faxed to the Office of Disciplinary Counsel on October 1, 1997, by the Clerk of the Supreme Court of Appeals.

Further, Respondent did not inform the Office of Disciplinary Counsel of the discipline imposed by the Disciplinary Hearing Commission of the North Carolina State Bar by its Order dated August 13, 1997, in violation of Rule 3.20(a) of the Rules of the Lawyer Disciplinary Procedure. Disciplinary Counsel learned of the North Carolina proceedings by letter from Carolin Bakewell, Counsel to the North Carolina Bar, dated July 18, 1997. Following a telephoned request, Office of Disciplinary Counsel received a copy of the Order of Discipline from Counsel to the North Carolina State Bar, which was sent by her letter of October 29, 1997.

By letter dated October 29, 1997, from Amie L. Johnson, Lawyer Disciplinary Counsel, Respondent was advised that Disciplinary Counsel had learned of Respondent's disbarment from practice in North Carolina, and of his reciprocal discipline by the Fourth

Circuit Court of Appeals. The letter requested that Respondent provide any information which would suggest that Office of Disciplinary Counsel should not proceed with reciprocal discipline proceedings under Rule 3.20 of the West Virginia Rules of Lawyer Disciplinary Procedure.

Respondent answered, by letters of November 4, 1997, and November 13, 1997, in the latter of which he stated that for personal reasons stated in detail therein, he is dissuaded from mounting a defense in West Virginia in the reciprocal disciplinary matters. Respondent has not filed either a request for a formal hearing or a full copy of the recorded disciplinary proceedings which resulted in the imposition of the Disciplinary Order in North Carolina or in the Fourth Circuit.

B. Statement of Facts

The Order of Disbarment from the Fourth Circuit has its origins in the disbarment order of the North Carolina Bar. The North Carolina Bar appointed a committee to hear the disciplinary matter involving the Respondent. The committee found the facts summarized below:

1. The North Carolina disciplinary proceeding was heard by the North Carolina State Bar, before a hearing committee, during the period of July 9-11, 1997. The respondent appeared in person and by counsel.

2. The Committee found jurisdiction to proceed under its statutory authority and under the Rules and Regulations of the North Carolina State Bar.

3. The Defendant, Respondent herein, was found to be admitted to practice in North Carolina, licensed to practice since September 8, 1989, and subject to the Rules of the North Carolina Bar and the Statutes of North Carolina. He was found to have actively engaged in practice and maintained offices in Stokes County, North Carolina.

4. Joseph E. Downs ("Downs") a person named in the Bar's original complaint, died in April, 1997, before the hearing of the charges.

5. Downs was employed as a lawyer by Firestone Tire and Rubber Company ("Firestone") in Akron, Ohio. Firestone is now known as Bridgestone/Firestone, Incorporated.

6. Prior to and during Down's employment at Firestone, the company produced a multi-piece wheel known as an "RH5 degree Wheel", which was used on one to five ton trucks. The RH5 wheel rim was the subject of many lawsuits against Firestone, in which it was alleged that defects caused the rim to explode during inflation of the tire on the rim.

7. Downs had substantial involvement in direction and co-ordination of the multi-piece rim litigation, including roles as trial counsel and trainer for outside counsel and expert witnesses. He also worked with government regulators on safety and compliance issues on behalf of Firestone.

8. Downs learned secrets and confidences related to the multi-piece rim litigation conducted by Firestone, and to other corporation matters.

9. As with many types of products litigation, multi-piece rim litigation is neither new nor developing, and Plaintiffs' claims and Firestone's defenses in those cases do not vary over time. These cases are expensive and time consuming to try. The cases turn on engineering concepts and require expert testimony on the concepts. Acquiring the expertise to prosecute or defend a multi-piece rim case in time consuming and difficult. Access to documents regarding previous rim cases is limited in part due to records storage in a single facility in Kansas City.

10. In 1983,after being demoted by Firestone, Downs no longer had responsibility for rim cases. He was directed to obtain counseling and treatment for alcohol abuse, began,

but did not complete, a course of treatment at the Betty Ford Center, and denied that he was an alcoholic. Downs's supervisor observed that Downs was unhappy with his job assignments after his demotion, and believed that he was mistreated by Firestone.

11. In 1986, Downs left Firestone for a position with R. J. Reynolds Tobacco Co. ("Reynolds") in Winston-Salem, North Carolina, where he was employed until discharged by Reynolds in 1988. After this time, he engaged in the private practice of law in Stokes County, North Carolina.

12. In approximately August 1986, Respondent undertook the representation of Anna Workman concerning injuries to her family members involving a Firestone multi-piece rim. Her husband later died from the rim-related injuries.

13. Respondent lived in West Virginia at the time Mrs. Workman contacted him. He had not involved in a rim case before, and had limited products litigation experience. He moved to Winston-Salem, North Carolina, shortly after undertaking the Workman representation, and continued to represent them, although no pleadings had been filed in their behalf.

14. Respondent met Downs in October or November 1987, and the two quickly became friends. Respondent was aware of Downs's Firestone connection and his expertise in rim litigation. Early in their acquaintance, Respondent advised Downs of his client's case, of Firestone exposure, and described Mr. Workman's injuries to him. Both Respondent and Downs recognized the serious conflict of interest which would result in Downs would become involved in rim litigation against Firestone.

15. Respondent, in July 1988, filed a complaint styled *Workman v. General Motors, et al., ("Workman")* in the United States District Court for the Northern District of Ohio. That

case was a multi-piece rim products liability action in which General Motors Corporation ("GM"), Firestone, and other companies were named as party defendants.

16. Both Downs and Respondent were admitted to practice in the North Carolina State Bar in 1989. From October 1989 until October 1990, Respondent sub-let an office from Downs in a shopping center in King, North Carolina. The lawyers shared office space, a fax line and a post office box. They had no employees, except a secretary, Mary Downs, Downs's wife. There were no other attorneys in the office. After October 1990, Respondent rented other office space in King, North Carolina.

17. During all times while *Workman* was pending, Respondent's King, North Carolina, address was concealed from the Court and from Firestone. Respondent concealed the fact that he was sharing an office with Downs, and used a post office box in Winston-Salem on all correspondence with Firestone and the Court in that matter. Respondent was aware that if Firestone learned that he practiced law in the same town as Downs, they might become suspicious and file motions to disqualify him in the *Workman* matter.

18. However, while *Workman* was pending, Respondent used his King, North Carolina, address on correspondence and pleadings on other matters which did not involve Firestone.

19. Between October 1987 and October 1991, Downs provided Respondent with insight and with information gathered during his tenure at Firestone which were useful to Respondent in the *Workman* litigation. Respondent also learned through this means and also gained specific assistance from Downs, *inter alia*, as follows:

a. That Stephen Blate, a Firestone employee, had been treated badly by Firestone. The information was not widely known to Plaintiffs' attorneys, and encouraged Respondent's resolve to depose Blate.

b. Downs's assessment of Frances Prell, a Firestone attorney with whom Downs had worked while at the operation.

c. Downs's opinions of the capabilities of Max Nonamaker and Robert Lee, two of Firestone's expert witnesses.

d. Downs participated in the preparation of an amended complaint and other documents in *Workman*.

e. Downs met with Respondent and Michael Maddox to prepare Maddox for his testimony as an expert witness in *Workman*. The Workmans were billed for at least part of his time by Maddox. The meeting took place at Down's home in Stokes County, North Carolina.

f. Downs referred Respondent to Ken Williford, a Texas attorney, to assist in the trial of the *Workman* case.

g. Downs and Respondent discussed the case by telephone on a number of occasions when Respondent was out of town for appearances or conferences in the *Workman* case. The telephone conferences continued after Respondent no longer shared space with Downs.

20. Downs neither sought nor obtained consent from Firestone to provide his assistance to Respondent in the *Workman* case or in other wheel rim litigation against Firestone. Firestone would not have consented to any involvement by Downs in wheel rim litigation against Firestone.

21. In early 1990, Respondent represented Downs in a civil dispute involving one Eli Gruabert, an aircraft broker.

22. In 1990, while sharing office space, Respondent and Downs represented Danny Goings in a domestic case in Surry County, North Carolina.

23. In approximately September 1991, Respondent settled the *Workman* case against Firestone for 1.2 million dollars. Respondent's fee in the case was $469,418.66. A fee of $33,000.00 was paid to David Looney, who served as local counsel in Ohio.

24. Within a day or so after receiving his fee in November 1991, Respondent wrote a check to Downs in the amount of $234,709.33, which sum was exactly one-half of the total fee he received in *Workman*.

25. Respondent and Downs were not law partners at any time between 1986 and 1991.

26. The clients in *Workman* were not advised of Downs's participation in the lawsuit or the risks to them of his participation, and did not consent to it. Neither were the clients advised of the fee sharing arrangement, nor did they consent to it.

27. Respondent reported only one-half of the fee in *Workman* as income on his 1991 income tax return, thereby treating the payment to Downs as a straight fee split.

28. After his settlement in *Workman*, Respondent undertook representation in three additional wheel rim cases, referred to as the *Baker, Kelling, and Logan* cases.

29. In 1993, by accident, Respondent sent a facsimile transmission bearing his address in King, North Carolina, to Fran Prell, a lawyer representing Firestone in the *Baker* case. Respondent's facsimile transmission was the first notice that any Firestone lawyer had received that Respondent was practicing in King, rather than Winston-Salem.

30. Following the discovery of Respondent's true address, Prell and other Firestone lawyers filed motions to disqualify Respondent as counsel in *Baker, Kelling and Logan.*

31. Hearings were held in the *Baker* and *Kelling* cases on motions to disqualify. Respondent was represented by counsel, and he was afforded an opportunity to participate. After hearings, Respondent was found to have engaged in unethical conduct by obtaining inside information and assistance from Downs. He was disqualified and prohibited from participating in *Baker, Kelling and Logan*, and was forbidden to accept a fee in any of the cases.

32. Respondent opposed the motions to disqualify and contended that Firestone had brought Motions in bad faith. He testified in the *Kelling* disqualification hearing on July 24, 1994, that he had not tried to conceal his relationship with Downs. At his disciplinary hearing, Respondent testified that he did attempt to conceal the office sharing arrangement with his King, North Carolina, address from Firestone's lawyers.

33. Based upon the findings of fact made by the North Carolina Committee, summarized in items numbered 1 through 32, above, the Committee further concluded that it had jurisdiction of the matter as to subject matter and as to person; they also concluded that there were grounds for discipline contained in the findings of fact.

34. The Committee concluded that Respondent had permitted Downs to assist him and to provide legal advise in the *Workman* case when he knew or should have known that Firestone did not and would not consent to Down's involvement in the case, and when he knew of the substantial relationship between the *Workman* case and other wheel rim cases defended by Downs against Firestone. The Committee concluded that such conduct by Respondent in assisting Downs to violate Rule 5.1(d), constituted a violation of Rule 1.2(a).

35. The Committee further concluded that Respondent, by giving Downs one-half of the fee in *Workman* when the clients had not agreed to the arrangements in writing, had improperly divided a legal fee with a non-partner, in violation of Rule 2.6(d).

36. The Committee determined that Respondent's misconduct had been aggravated by his dishonest or selfish motive; by his submission of false evidence, false statements, or other deceptive practices during the disciplinary process; by his refusal to acknowledge the wrongful nature of his conduct; and by his substantial experience in the practice of law.

37. The Committee determined that Respondent's misconduct was mitigated only by his absence of prior discipline, and that aggravating factors outweighed the mitigating factors in the case.

38. Based upon the findings and conclusions made in the case, the Committee further entered its order disbarring Respondent from the practice of law; required him to submit his license and membership card to the Secretary of the Bar; and required him to pay the costs of the proceedings and to comply with certain administrative provisions and rules regarding disciplined and disabled lawyers.

C. Conclusions of Law

The Hearing Panel Subcommittee finds that the Respondent violated Rule 3.20 of the West Virginia Rules of Lawyer Disciplinary Procedure, by not reporting the discipline imposed upon him to the Office of Disciplinary Counsel. The failure to report constitutes an aggravating factor pursuant to Rule 3.20(b).

Rules 3.20(e) provides that the Hearing Panel Subcommittee shall recommend 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 of law;

(2) the proof upon which the foreign jurisdiction based its determination of misconduct is so infirm that the Supreme Court of Appeals cannot, consistent with its duty, accept as final the determination of the foreign jurisdiction;

(3) the imposition of 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 be imposed by the Supreme Court of Appeals.

The Hearing Panel Subcommittee finds that the disciplinary procedure followed by the North Carolina State Bar and in the United States Court of Appeals for the Fourth Circuit comports with the requirements of the due process of law, as previously found by the Supreme Court of Appeals of West Virginia. *Committee on Legal Ethics v. Battistelli*, 405 S.E. 2d 242 (W.Va. 1991) and *Lawyer Disciplinary Board v. Kohout*, No. 22629 (W.Va. 4/14/95).

Respondent has, by his letter of November 13, 1997, raised the issue of due process. However, Respondent has failed to meet the requirements of Rule 3.20(d), with regard to a collateral challenge to the procedural aspects of the North Carolina proceedings against him. The Panel finds that Respondent has chosen not to file the record of the proceedings in North Carolina or the Fourth Circuit, and that he has made no request for a formal hearing before the Panel. Finally, the panel finds that Respondent has indicated that he does not intend to defend this proceeding.

Respondent has also raised the issue of the effect of the statute of limitations upon the potential violations in West Virginia. However, the standard of when the West Virginia authorities knew or should have known of the potential violations is clearly met in the instant

proceeding, since the violations were learned of through the letter from North Carolina Bar Counsel of July 18, 1997. Clearly, the West Virginia Office of Disciplinary Counsel has moved expeditiously within two years of learning of the violation, in accord with the limitation on complaints in Rule 2.14 of the West Virginia Rules of Disciplinary Procedure.

The Orders from North Carolina and the Fourth Circuit provide sufficient proof. The same discipline imposed by the Supreme Court would result in no grave injustice. A disbarment and annulment of license is warranted by the facts. Disbarment and annulment of license is consistent with the discipline imposed in the foreign jurisdictions. The fact that Respondent did not inform this jurisdiction of the other discipline is an aggravating circumstance, further supporting the severe sanction of a disbarment and annulment of license.

D. Recommended Discipline

The Hearing Panel Subcommittee recommends to the Supreme Court of Appeals that the Respondent be disbarred, and his license to practice be annulled; and further specifically provide that he cannot petition for reinstatement for at least five (5) years, even if the State Bar of North Carolina should reinstate Respondent before that time. In order to be reinstated to practice in West Virginia, Respondent must prove that he has been rehabilitated within the meaning set forth in *In Re: Brown*, 273 S.E. 2d 567 (W.Va. 1980).

Ann E. Snyder, Chairperson — Date: 12-16-97

Claudia W. Bentley, Esq. — Date: 12-29-97

Debra K. Sullivan — Date: 12-17-97