

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 7th of September, 2000, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 25410

Richard M. Brasher, Sr., a member of The  
West Virginia State Bar, Respondent

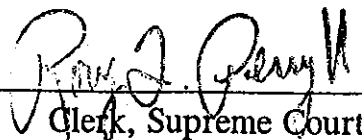
On a former day, to-wit, July 14, 2000, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Cheryl L. Henderson, its chairperson, pursuant to Rule 3.20(e) of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its written Findings of Fact, Conclusions of Law and Recommended Discipline recommending that the license to practice law in the State of West Virginia of the respondent, Richard M. Brasher, Sr., be annulled.

Upon consideration whereof, the Court is of opinion to and doth hereby adopt the recommendation of the Hearing Panel Subcommittee of the Lawyer Disciplinary Board. It is therefore ordered that the license to practice law in the State of West Virginia of the respondent, Richard M. Brasher, Sr., be, and it hereby is, annulled.

Service of an attested copy of this order 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: Richard M. Brasher, II, a member of  
The West Virginia State Bar**

**Sup. Ct. No. 25410  
I.D. No. 98-02-239**

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**HEARING PANEL SUBCOMMITTEE RECOMMENDED  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED DISCIPLINE**

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On December 11, 1998, Respondent Richard M. Brasher, II, Pro Se, moved to dismiss the statement of charges for lack of jurisdiction over the subject matter and person. However, in his Motion to Dismiss, Respondent failed to request a formal hearing pursuant to Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure. Therefore, the Hearing Panel Subcommittee may take action without conducting a formal hearing. Accordingly, the Subcommittee hereby makes the following findings and conclusions:

**FINDINGS OF FACT**

1. Richard M. Brasher, Sr. ("Respondent") is a lawyer practicing in Bluefield, Mercer 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 June 2, 1987. Respondent was admitted to The Florida State Bar on January 13, 1989.
2. A Statement of Charges was filed in this matter with the Supreme Court of Appeals of West Virginia on October 28, 1998.

**COPY**

3. On December 24, 1992, the Supreme Court of Florida approved a report of the referee that Respondent be allowed to resign from The Florida Bar effective *nunc pro tunc* November 21, 1991, with leave to apply for readmission after three years from said date. Judgment for costs in the amount of \$3,285.92 were awarded. A copy of the report is attached as Exhibit "A".

4. Respondent had entered into a Conditional Guilty Plea for Consent Judgment with the Florida Bar. In this document, Respondent acknowledged using client trust funds from six clients for personal use, and billing the same time spent on behalf of three clients with related cases to each client, thereby billing in triplicate.

5. Article VI, § 28-A(b) of the By-Laws of The West Virginia State Bar, in effect until July 1, 1994, required any lawyer "who voluntarily surrenders his license to practice law in connection with disciplinary proceedings in another jurisdiction" to notify Bar Counsel in writing within ten days.

6. Respondent did not notify The West Virginia State Bar and returned to West Virginia to resume the practice of law in Bluefield, West Virginia. Respondent never voluntarily informed The West Virginia State Bar or the Office of Disciplinary Counsel, created July 1, 1994, of the Florida disciplinary action.

7. Pursuant to Rule 3.20(c) of the Rules of Lawyer Disciplinary Procedure, which supersedes Article VI, § 28-A(b) of the By-Laws of The West Virginia State Bar, upon receiving notice that a lawyer who is a member has voluntarily surrendered his or her license to practice law in another jurisdiction, Disciplinary Counsel shall, following an investigation pursuant to these Rules, refer the matter to a Hearing Panel Subcommittee for appropriate action.

8. Pursuant to Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure, if the lawyer intends to challenge the validity of the voluntary surrender of his or her license to practice law in connection with a disciplinary proceeding, the lawyer must request a formal hearing and file with the Office of Disciplinary Counsel a full copy of the record of the disciplinary proceedings which

9. Pursuant to Rule 3.20(b) of the Rules of Lawyer Disciplinary Procedure, failure to notify the Office of Disciplinary Counsel of discipline in another jurisdiction shall constitute an aggravating factor in any subsequent disciplinary proceeding.

#### CONCLUSIONS OF LAW

10. Respondent did not comply with Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure by failing to request a formal hearing and filing with the Office of Disciplinary Counsel a full copy of the record of the disciplinary proceedings which resulted in the voluntary surrender of a license to practice law.

11. The Hearing Panel Subcommittee finds Respondent violated Article VI, § 28-A(b) of the By-Laws of The West Virginia State Bar, in effect until July 1, 1994, by failing to voluntarily inform The West Virginia State Bar or the Office of Disciplinary Counsel, created July 1, 1994, of the Florida disciplinary action.

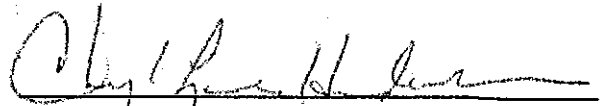
12. Pursuant to Rule 3.20(b) of the Rules of Lawyer Disciplinary Procedure, failure to notify the Office of Disciplinary Counsel of discipline in another jurisdiction shall constitute an aggravating factor in any subsequent disciplinary proceeding.

13. Rule 3.20(e) of the Rules of Lawyer Disciplinary Procedure provides that the same discipline shall be imposed 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 inform that the Supreme Court of Appeals cannot, consistent with its duty, accept as final the determination of the foreign jurisdiction; (3) the imposition by 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.

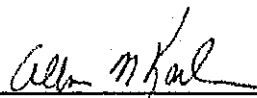
**RECOMMENDED DISCIPLINE**

14. Based upon the seriousness of the misconduct in Florida and the aggravating factor that Respondent never notified West Virginia and wrongly continued to practice law, the Hearing Panel Subcommittee recommends that Respondent's law license should be annulled.



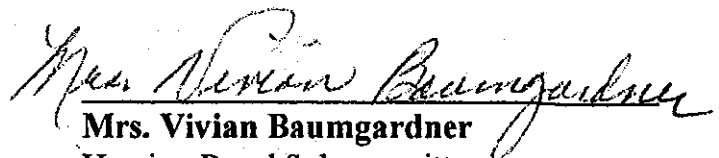
**Cheryl L. Henderson, Chairperson**  
Hearing Panel Subcommittee

Date: 6/6/00



**Allan N. Karlin, Esquire**  
Hearing Panel Subcommittee

Date: 6/30/00



**Mrs. Vivian Baumgardner**  
Hearing Panel Subcommittee

Date: June 20, 2000