

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 19th day of April, 2000, the following order was made and entered:

Hearing Panel of the Committee on
Legal Ethics of The West Virginia
State Bar, Complainant

vs.) No. 22331

Patricia A. Bunner, a suspended
member of The West Virginia State
Bar, Respondent

On a former day, to-wit, January 14, 2000, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board (formerly known as the Hearing Panel of the Committee on Legal Ethics of The West Virginia State Bar), by David J. Romano, its chairperson, subsequent to this Court's order entered on the 8th day of January, 1997, lifting the July 13, 1995 stay of proceedings, and presented to the Court its written recommended disposition finding that the respondent violated Rules 1.15(a) and (b), 1.2(d), 1.8(h) and 8.4(c) and (d) of the Rules of Professional Conduct in Count I. It further found that the respondent violated Rules 1.3, Rule 1.15(b), and 1.16(a)(3) and 1.16(d) in Count III. Counts II, IV and V were not proven. Finally, it was determined that the respondent unlawfully engaged in the practice of law. It is therefore recommended that: (1) respondent's license to practice law in the State of West Virginia be suspended indefinitely; (2) respondent be precluded from petitioning for reinstatement for two years beginning on the date of the Court's order; (3) as a condition of reinstatement, respondent be required to demonstrate by expert medical and/or psychological testimony that she is

capable of practicing law; (4) upon reinstatement, respondent's practice of law be supervised for a period of twelve months following reinstatement by an attorney in good standing in her local practice area who shall act on criteria set forth by the Office of Disciplinary Counsel, including periodic visits with the supervising attorney, review of trust account activities, calendaring, client contacts and other aspects of the practice of law, and if these criteria cannot be agreed upon, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board shall decide any disputes. Respondent be required to provide evidence of professional liability insurance in the amount of One Million Dollars (\$1,000,000.00), in order to be reinstated and practice during the twelve-month supervisory period; and (5) respondent be required to pay for the reasonable costs of this proceeding. Thereafter, on the 24th day of February, 2000, came the respondent, Patricia A. Bunner, pro se, and presented to the Court her written response thereto.

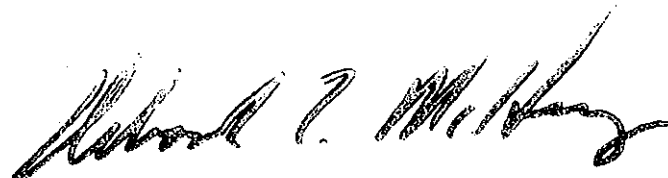
Upon consideration whereof, the Court is of opinion to and doth hereby adopt the aforesaid recommendations and doth hereby find that the respondent violated Rules 1.15(a) and (b), 1.16(a)(3) and 1.16(d), 1.2(d), 1.3, 1.8(h) and 8.4(c) and (d) of the Rules of Professional Conduct. It is therefore ordered that: (1) respondent's license to practice law in the State of West Virginia be, and it hereby is, suspended indefinitely; (2) respondent is hereby precluded from petitioning for reinstatement of her license to practice law in the State of West Virginia for two years from the date of this order; (3) as a condition of reinstatement, respondent shall demonstrate, by expert medical and/or psychological testimony, that she is capable of practicing law; (4) respondent's practice shall be supervised for a period of twelve months following reinstatement by an

attorney in good standing in her local practice area who shall act on criteria set forth by the Office of Disciplinary Counsel, including periodic visits with the supervising attorney, review of trust account activities, calendaring, client contacts and other aspects of the practice of law, and if these criteria cannot be agreed upon, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board shall decide any disputes. Respondent shall provide evidence of professional liability insurance in the amount of One Million Dollars (\$1,000,000.00), in order to be reinstated and practice during the twelve-month supervisory period; and (5) respondent shall reimburse the Lawyer Disciplinary Board for costs and expenses incurred in this matter. Justice Starcher did not participate in the consideration or decision of this matter.

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

A True Copy

Attest:



Clerk, Supreme Court of Appeals

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

FILED

JAN 14 2000

DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Re: PATRICIA A. BUNNER, an inactive member I.D. Nos.:
of The West Virginia State Bar

**92-02-090, 93-02-098,
91-02-193, 93-02-428,
& 93-02-065**

Supreme Court No.: 22331

**SUBCOMMITTEE HEARING PANELS PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDATION FOR DISCIPLINE**

Procedural Background

This disciplinary proceeding has a long history. In 1994, disciplinary proceedings were pending against Respondent and her brother and law partner, William K. Bunner, with respect to these charges. Respondent did not appear at the scheduled hearing on June 2, 1994. She contended that she could not participate in the proceedings due to emotional problems.¹

In light of Respondent's allegations of impairment, the Hearing Panel of the Committee on Legal Ethics filed a petition on June 10, 1994, requesting that this Court order Respondent to submit to a psychological and/or psychiatric evaluation and order her law license to be suspended immediately for the protection of the public. Respondent filed a response with this Court admitting that she was impaired or incapacitated. However, she resisted the suspension of her law license, because it could exacerbate her depression to the

¹ Although Respondent's brother, William K. Bunner, also did not appear at the hearing, he did not claim any type of impairment. The Supreme Court ordered that Mr. Bunner's law license be suspended for a three year period, effective November 5, 1994. See Lawyer Disciplinary Board v. William K. Bunner, No. 22462 (W. Va. 10/6/94).

point where she would be at risk of committing suicide. In the words of the Court, "She assured the Court that she would not practice law until this matter is resolved." Hearing Panel of the Committee on Legal Ethics v. Patricia A. Bunner, No. 22331 (W. Va. 7/8/94).

As a result of these proceedings, on July 8, 1994, the Court ordered that Respondent be evaluated and that she be placed on inactive status pending the outcome of the evaluation. The Court further ordered that, "She specifically is prohibited from meeting with clients or otherwise engaging in the practice of law." Ibid.

Ms. Bunner had a neuropsychological evaluation with Mark W. Haught, PH.D. Dr. Haught stated that although Ms. Bunner had the mental capability to practice law, she was currently unable to function as an attorney due to her "behavioral presentation" and her own admission that she could not practice. He also diagnosed her as suffering from major depression.

After consideration of the evaluation, the Court issued a second opinion on July 13, 1995. The Court held that Ms. Bunner was incapable of practicing law, and that her disability rendered it impossible for her to adequately defend the disciplinary charges against her at this time. The Court further held that the pending disciplinary proceedings be held in abeyance until the determination is made that Ms. Bunner is capable of practicing law. The disciplinary proceedings would then be permitted to proceed following an Order of reinstatement. Hearing Panel of the Committee on Legal Ethics v. Patricia A. Bunner, No. 22331 (7/13/95).

On or about December 19, 1996, the Office of Disciplinary Counsel filed a "Petition for Contempt" with the Supreme Court of Appeals, alleging that Respondent continued to

practice law despite the previous Court Orders by representing West Virginia residents Eleanor Moore, Larry Moore and their son, Allen Moore, in a DPT vaccine claim before the United States Court of Federal Claims. This petition was mailed to Respondent at the address she has given the U. S. Court of Claims in pleadings filed on October 20, 1995 and April 3, 1996 [Exhibits 1 & 2 made part of the record at Pre-hearing Conference, called "Bunner Exhibits"]: A-9, Le Mesa Trailer Park, Morgantown, West Virginia 26505.² It was returned on December 30, 1996 with the word "moved" handwritten on the package. [Bunner Ex. 3]. As later attested by the mail carrier to the trailer park in an affidavit, Respondent routinely received mail to this address, but sometimes a piece of mail would be returned to the mailbox marked "moved". [Exhibit 4 presented to Hearing Panel on date of hearing-- "HP Ex." 4].

On January 8, 1997, the Court refused to issue a rule in contempt, but granted alternative relief. Office of Lawyer Disciplinary Counsel v. Patricia Bunner, No. 970059 (W. Va. 1/8/97). The Court lifted the stay of the pending disciplinary proceedings.

An Order was entered by the Subcommittee Chairperson on February 6, 1997, setting a pretrial status conference for March 17, 1997. This Order was mailed to Respondent at the Le Mesa Trailer Park and was returned with the stamp "return to sender, moved left no address". [Bunner Ex. 6].

This Order, the Supreme Court's Order of January 8, 1997, the petition for contempt and the Supreme Court's Order of July 13, 1995 was personally served by the Monongalia County Sheriff's Department upon Respondent's brother, William Bunner, at A-9, Le Mesa

² In pleadings filed with the U. S. Court of Claims, Respondent explained that her home in Fairview, West Virginia had burned and that she had difficulty receiving mail sent to that address.

Trailer Park on February 21, 1997. [Bunner Ex. 5]. Respondent did not appear for the March 17, 1997 conference.

The Subcommittee scheduled a hearing for May 16, 1997. Respondent was personally served with the Notice of Hearing on May 1, 1997 by a process server who followed Respondent from the Le Mesa Trailer Park to a drive through bank in Sabraton, West Virginia. In addition, a notice of the hearing was placed in the Morgantown Paper, The Dominion Post, on April 18, April 25 and May 2, 1997.

On or about May 12, 1997, Respondent filed a "Petition for Writ of Prohibition or in the Alternative Petition and Motion to Stay Proceedings" with the Supreme Court of Appeals, seeking to stay the May 16, 1997 hearing. She alleged that her legal address was Route 2, Box 341, Fairview, West Virginia 26570 in Marion County and that she had never been served with a copy of the charges. The Court denied the motion on May 14, 1997. In the meantime, however, the Subcommittee entered an Order on May 14, 1997 continuing the proceedings to permit the Court sufficient time to rule upon the motion. The Subcommittee ordered that Respondent hereafter be served by mail at the Fairview, West Virginia and the Morgantown, West Virginia addresses.

As represented by Chief Lawyer Disciplinary Counsel, Sherri D. Goodman, to the Hearing Panel Subcommittee, Ms. Goodman attempted to alert Respondent that the hearing would be continued by sending a letter to Respondent dated May 13, 1997 by overnight mail to both addresses. Both copies were returned as "unclaimed".

The Subcommittee rescheduled the disciplinary hearing for August 18, 1997 at the Marion County Courthouse on August 18, 1997. A notice was again placed in The Dominion Post on July 25, 1997, August 1, 1997 and August 8, 1997.

Respondent sent a letter dated July 29, 1997 to the Subcommittee Chairperson and postmarked August 13, 1997 from Clarksburg, West Virginia, requesting a continuance on the grounds that August 18 was the first day of her graduate classes at West Virginia University in Morgantown. The letter listed a return address of 637 Brockway Avenue in Morgantown. [HP Ex. 2]. She sent a second letter also dated July 29, 1997 but postmarked August 13, 1997 from Clarksburg in which she challenged the jurisdiction for the disciplinary proceedings and alleged she would not receive a fair and impartial hearing. [HP Ex. 3]. Respondent also filed a "Petition for Writ of Mandamus or in the alternative Motion to Dismiss Proceedings" with the Supreme Court of Appeals which was served by mail on August 13, 1997. [HP Ex. 1]. The Office of Disciplinary Counsel protested the motion to continue by letter dated August 12, 1997.³ A copy was sent to Respondent at the Brockway Avenue address. Ms. Goodman represented that it was returned with the stamp "Returned to Sender Attempted-Not Known".

A hearing in this disciplinary proceeding was held on August 18, 1997 at the Marion County Courthouse beginning at 10:04 a.m. Respondent did not appear. Respondent's name was called in the hallway of the third floor of the Marion County Courthouse. A sign was posted on the door of the attorney's conference room, where the hearing was originally scheduled, advising that the hearing had been moved to the grand jury room down the hall.

Present were David J. Romano and Sister Mona Farthing. Subcommittee member Claudia Bentley was not present, but the other two members conferred with Ms. Bentley.

³ Ms. Goodman received a copy of the first letter dated July 29, 1997 on August 9, 1997. Her copy bears an August 7, 1997 postmark from Clarksburg.

Ms. Goodman was present on behalf of the Office of Disciplinary Counsel ("ODC"). The ODC called Eleanor Ruth Ann Moore as a witness. The ODC moved for the admission of ODC Exhibits 1 through 40 and 42 through 48, which motion was granted. The record was held open for the submission of ODC Exhibits 49 and 50, the sworn testimony of William Golden and Rosemary Golden, respectively. These were submitted in October, 1997. Ms. Goodman also tendered a notebook containing the sworn testimony of Alice E. Young taken during William Bunner's disciplinary proceeding and the sworn statements of Henri Marler, Barbara McCoy, Jack Rogers, Donna Thompson and Alice Young. To avoid confusion, the Subcommittee denominates them as follows:

- ODC Ex. 51 - Sworn testimony of Alice E. Young taken before a Hearing Panel Subcommittee on June 2, 1994
- ODC Ex. 52 - Sworn statement, via telephone, of Henri Marler, taken on June 2, 1994
- ODC Ex. 53 - Sworn statement, via telephone, of Jack Rogers, taken on June 2, 1994
- ODC Ex. 54 - Sworn statement of Barbara McCoy, taken on June 2, 1994
- ODC Ex. 55 - Sworn statement of Alice E. Young, taken on June 2, 1994
- ODC Ex. 56 - Sworn statement of Donna M. Thompson, taken on June 2, 1994.

The Subcommittee notes that the 1994 Hearing Panel Subcommittee permitted Ms. Goodman to take the sworn statements of the witnesses who appeared for the June 2, 1994 hearing to testify concerning Respondent in her absence. When the Supreme Court entered an Order holding the disciplinary proceeding in abeyance, it ruled that these sworn

statements could be used as evidence should the disciplinary proceeding later moved forward.

Upon deliberation and review of the above-cited exhibits and testimony, the Hearing Panel Subcommittee makes the following findings of fact, conclusions of law and recommendation concerning discipline:

**COUNT I - I.D. No. 92-02-090
Complaint Regarding William Golden**

Findings of Fact

1. At the time of the events set forth here, Patricia A. Bunner ("Respondent" herein) was a licensed member of The West Virginia State Bar who maintained a law practice in Monongalia County and Marion County, West Virginia, and, as such, is subject to the continuing 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 16, 1978. She practiced with her brother, William K. Bunner, admitted on the same date.

2. In 1987, William Golden agreed to sell a car to four different individuals and accepted deposits from each. As a consequence, criminal complaints were filed against Mr. Golden while he was living in the State of Florida. [ODC Exs. 2& 3]. When he learned of the criminal charges, he requested that his mother, Rosemary Golden, contact a lawyer to negotiate paying off the victims. [ODC Ex. 50, p. 7].

3. Mrs. Golden met with Respondent, who was practicing with her brother as Bunner & Bunner. Respondent agreed to represent Mr. Golden for \$2,000 or \$2,500. [Id.

at 8; ODC Ex. 49, p. 4]. Mr. Golden hired both Bunners. [ODC Ex. 49, p. 4]. Mrs. Golden paid Respondents legal fees for representation in the following amounts:

- | | | | |
|-----|-------------------|---|------------|
| (a) | August 15, 1988 | - | \$1,000.00 |
| (b) | August 29, 1988 | - | \$ 500.00 |
| (c) | November 16, 1988 | - | \$ 200.00 |

Mrs. Golden may have also paid an additional \$901.80 in accordance with an undated note. [ODC Ex. 4].

4. Mr. Golden did not return to West Virginia. He testified that the Bunners both gave him advice about which states to avoid because they had a reputation for extraditing people quickly. Respondent also advised him to watch the obituaries for someone of Mr. Golden's age who had died in order to obtain false identification. [ODC Ex. 49 at 8]. When Mr. Golden's father died in August of 1990, Respondent told Mrs. Golden her son should not come within a 500 mile radius of West Virginia. Respondent wanted Mr. Golden to go to Canada. [ODC Ex. 50 at 13-14].

5. On November 8, 1989, Mr. Golden sent a cashier's check made payable to Patricia Bunner, Attorney-at-law for \$5,500.00. As reflected in the receipt which Respondent wrote, the \$5,500.00 cashier's check was for the purpose of restitution to the people to whom he had sold his vehicle. [ODC Ex. 5].⁴

6. Respondent deposited the \$5,500.00 into her savings account at Community Bank & Trust of Morgantown on November 14, 1989. [ODC Ex. 6]. Withdrawals were made from this savings account from January 17, 1990 through March 26, 1990, until \$100.94 remained in the account. [Id.]. She did not make restitution to Mr. Golden's victims.

⁴ Mr. Golden previously had sent the money in the form of traveler's check which the bank would not negotiate. [ODC Ex. 50, p. 11].

7. Respondent negotiated with Marcia Ashdown of the Office of Prosecuting Attorney of Monongalia County for a plea agreement. [ODC Ex. 40, p. 6]. This agreement required Mr. Golden to plead to two felony counts and one misdemeanor. The plea agreement recited that the "defendant has accumulated \$5,500.00 to be applied as restitution in these cases." [ODC Ex. 7]. On April 13, 1990, Respondent sent the plea agreement to Mrs. Golden to forward to her son. [ODC Ex. 8]. Mr. Golden signed the documents and sent them back. [ODC Ex. 49, p. 11].

8. A hearing date of June 4, 1990 was set for Mr. Golden to enter his guilty plea. Mr. Golden traveled from California to Washington, Pennsylvania, but did not enter West Virginia. Respondent had told Mr. Golden that the investigative officer, Trooper M. A. Finkenbinder "was out to get" him and that he should turn himself in to Respondent who would escort him directly to the courtroom. [Id. at 11-12].

9. However, when Mr. Golden reached Washington and called Respondent, she reported that she had talked to Judge Stone and to the prosecutor's office. She said "The Judge wants your ass." She predicted that the Judge was going to "throw the book at" him, and he would probably get 40 years in the state penitentiary. Respondent explained that Mr. Golden's father and brother were also in criminal trouble, and the Judge wanted to set an example for them. Respondent advised Mr. Golden to get as far away from West Virginia as he could. He did not appear for the hearing. [ODC Ex. 49, p. 12-14].

10. Respondent also told Mr. Golden that the victims had refused to accept restitution and that the money was in a trust account earning interest. [Id. at 13-14; see also Golden letter to Respondent, ODC Ex. 16].

11. The Prosecuting Attorney of Monongalia County, Susan Tucker, testified by evidentiary deposition that each felony to which Mr. Golden intended to plead guilty carried

a potential penalty of one to ten years imprisonment and the misdemeanor was no more than one year. Her office had agreed to recommend that Mr. Golden serve one year in the county jail. [ODC Ex. 40, p. 7-8]. Trooper Finkenbinder had contacted all of the victims to verify the amount of their loss so restitution could be calculated. [Id. at 9]. None of the victims refused to accept restitution. [Id. at 15-16]. Ms. Tucker testified that she never heard from Judge Stone or Respondent that the Judge planned to sentence Mr. Golden harshly. She was unaware of any problems involving Mr. Golden's family. [Id. at 14].

12. After returning to California, Mr. Golden requested that Respondent return to him the \$5,500.00. Respondent advised him to leave some money in the trust account and to leave her on the case to see what she could work out with the Prosecutor. Respondent sent Mr. Golden approximately \$2,500.00 by Western Union. [ODC Ex. 49, pp. 15-16].

13. Eventually, Mr. Golden requested that Respondent refund all of the restitution which, by his reckoning, was approximately \$2,850.00 after deducting the \$2,500.00 payment. Respondent did not send money, but gave him many different reasons for her inability to do so. [ODC Ex. 49, p. 17].

14. An individual acting as Respondent's office manager, named Mike, wrote Rosemary Golden a brief letter on February 6, 1991, which read: "The matter concerning your son is being [sic] resolved, if you have any questions, please call Mike, at 296-3000." [ODC Ex. 9].

15. On or about February 8, 1991, Respondent gave Rosemary Golden \$650.00 in cash and a personal check for \$2,200.00, dated February 1, 1991.⁵ This check was written

⁵ Mr. Golden testified that the check was back dated; Mrs. Golden did not remember it being back dated. [ODC Ex. 50, pp. 17-18].

on Patricia Bunner's personal account at CB&T of Morgantown. The check was returned on the basis that the account had been closed. [ODC Ex. 10]. As of December 10, 1990, the account was in a negative balance of \$2,219.30.⁶ It appears from the last statement that the bank zeroed the checking account on December 12, 1990. [ODC Ex. 11].

16. Mrs. Golden filed a worthless check complaint with the Magistrate Court on February 28, 1991 against Respondent. [ODC Ex. 12].

17. On March 4, 1991, William Bunner went to Rosemary Golden's apartment and paid her \$2,306.00 in cash. [ODC Ex. 50, p. 19-20]. He had Mrs. Golden sign a release which stated that Mrs. Golden "agrees to hold harmless Patricia A. Bunner or William K. Bunner for the delay in receipt of \$2,306.00 cash in lieu of the original check for \$2,200.00 per the agreement of Bill Golden with Michael Pablock, Agent for Patricia Bunner." The release also stated that the Golden's would dismiss the worthless check action. [ODC Ex. 13]. Mrs. Golden did so on March 5, 1991. [ODC Ex. 14].

18. On May 17, 1991, Mr. Golden was arrested in California on a different matter and sentenced to six months in jail. He was thereafter extradited to Monongalia County on October 7, 1991. [ODC Ex. 17].

19. On or about October 8, 1991, Respondent visited Mr. Golden at the jail. She brought a handwritten agreement between Patricia A. Bunner and William Golden for his

⁶ This negative balance was primarily caused by the Bunnings' involvement with now deceased attorney Kenneth Simons when he acted as Executor of the Agnes Corwin Estate. Mr. Simons wrote a check made payable to Bunner & Bunner in the amount of \$2,590 dated September 19, 1990. [ODC Ex. 39]. Respondent deposited this check into her account on September 20, 1990, but apparently received back \$590. [See ODC Ex. 11, Statement for 9/10/90 - 10/10/90; and ODC Ex. 39, back of check]. The check was returned for insufficient funds and \$2,590 was debited against Respondent's account on October 18, 1990. This caused the account to go into an immediate negative balance of \$2,104.30. Other checks written on the account bounced and debit charges for insufficient funds and service charges were added to the account until a negative balance of \$2,109.30 was reached as of December 10, 1990.

signature. The document recited that Respondent has been paid a legal fee of \$2,500 and that she had substantially earned the fee in previous plea negotiations. Respondent agreed that she would continue to represent Mr. Golden zealously through sentencing for no additional fee. [ODC Ex. 18].

20. Mr. Golden did not sign this document and began to consider hiring other counsel. There was a period of confusion during which it was unclear who was representing him. Attorney William Brewer began acting on Mr. Golden's behalf on October 10, 1991, when he obtained a continuance of the preliminary hearing scheduled that date. [ODC Ex. 15]. Mr. Golden did not perceive that he had hired Mr. Brewer, yet. [ODC Ex. 49, p. 21-22].

21. Respondent filed a "Petition for Writ of Habeas Corpus Motion to Dismiss Charges" on October 18, 1991 and scheduled a hearing before the Circuit Court for November 18, 1991. [ODC Ex. 19]. Mr. Golden testified that he agreed to this filing, because Respondent had told him that William Brewer would not be allowed to represent him.

22. Mr. Golden contacted the Office of Prosecuting Attorney and the Circuit Court Judge with respect to his problems with the Bunnars. As a result, Mr. Brewer was appointed to represent Mr. Golden. At the November 18, 1991 hearing, the Court clarified that Respondent and William Bunner did not represent Mr. Golden. [ODC Ex. 21].

23. Before the November 18, 1991 hearing, Respondent prepared and delivered an itemization of the time the Bunnars had spent from July 22, 1988 through October 30, 1991. This showed the Bunnars had earned \$2,498.50. [ODC Ex. 22]. Mr. Bunner agreed to represent Mr. Golden in a different matter to prevent him from losing some property for

failure to pay property tax, as reflected in a letter written by Respondent. [ODC Ex. 22, Letter dated November 1, 1991].

24. On January 2, 1992, Respondent, William Bunner and Mr. Golden met at the Bunnors's Morgantown office. Mr. Golden wore a recording device. The Bunnors explained that the reason the check to Rosemary Golden had been returned was because an attorney had written them a back check, which caused the bank to freeze their account. [ODC Ex. 49, p. 26]. The Bunnors boasted that they were highly-rated attorneys and were listed in Who's Who in America. [Id. at 27].

25. At the meeting, William Bunner prepared a handwritten agreement which stated that Bunner & Bunner would remit "value \$2,000.00 to Bill Golden for full settlement of any and all claims for refund on representation including any problem with restitution account money returned him in late Winter 1990." The agreement further stated that Bunner & Bunner was paying a cashier's check for \$1,200.00 with the balance to be paid at a later date. The agreement further stated "Bill Golden will hold Patricia Bunner, William Bunner and their partnership harmless for any past representation before 1 January, 1992, and will refrain from litigating on those matters. Any action would be limited to this handwritten agreement. Bill Golden will further make no report to West Virginia Public Safety or State Bar of such matters and alleged misconduct by the other parties. Any questions hereunder have been resolved by this agreement." [ODC Ex. 24]. Mr. Bunner gave Mr. Golden a cashier's check for \$1,200. [ODC Ex. 26].

Conclusions of Law

26. The Office of Disciplinary Counsel has the burden of proving its allegations by clear and convincing evidence. The Hearing Panel Subcommittee finds that ODC has

met its burden with respect to Count 1. By failing to maintain the \$5,500.00 restitution in a client trust account escrow, by spending the money and by failing to return the money promptly when requested, Respondent violated Rules 1.15(a) and (b) of the Rules of Professional Conduct, which provide:

RULE 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated as a "client's trust account" in an institution whose accounts are federally insured and maintained in the state where the lawyer's office is situated, or in a separate account elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

27. By spending client money which was to be held in trust, Respondent also violated Rule 8.4(c) of the Rules of Professional Conduct, which provides:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

28. By encouraging Mr. Golden to stay away from West Virginia and providing him with information on how to obtain a false identity, Respondents violated Rule 1.2(d) of the Rules of Professional Conduct, which provides:

RULE 1.2 Scope of Representation

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

29. By having Rosemary Golden, on William Golden's behalf, and William Golden sign agreements which, in effect, waived liability, without advising them in writing to consult other counsel, Respondent violated Rule 1.8(h) of the Rules of Professional Conduct, which provides:

RULE 1.8 Conflict of Interest: Prohibited Transactions

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

30. By drafting an agreement which prohibited Mr. Golden from filing an ethics complaint with The West Virginia State Bar, Respondent violated Rule 8.4(d) of the Rules of Professional Conduct, which provides:

RULE 8.4 Misconduct

(d) engage in conduct that is prejudicial to the administration of justice.

**COUNT II - I.D. No. 93-02-098
Complaint of Jack Rogers**

Findings of Fact

31. The finding of jurisdiction contained in paragraph one of this Subcommittee Report are incorporated herein.

32. Respondent and William Bunner represented indigent defendants in criminal matters and submitted vouchers and payment orders to the Public Defender Services. Henri Marler, a former employee of the Public Defender Services, testified that she answered the telephone, audited attorney vouchers and relayed checks from the treasurer's office to the attorneys. [ODC Ex. 52, p. 3-4]. Respondent would call frequently to see where her vouchers or her brother's vouchers were in the process. By Ms. Marler's estimation, 80% of the times she inquired, Public Defender Services had not received the vouchers about which she was calling. Respondent accused the staff of throwing them away because they did not like her or because she was a Republican during a Democratic gubernatorial administration. [ODC Ex. 52, pp. 6-8].

33. Because of the abusive nature of Respondent's calls, Ms. Marler and another employee, Teresa Satters, reported the problem to the Executive Director, Jack Rogers, on October 30, 1992. Mr. Rogers then began keeping notes of any calls by Respondent of an abusive nature. [ODC Ex. 53, p. 4]. Mr. Rogers kept records of abusive calls on November 13, 1992, January 19, 1993 and February 10, 1993.

34. Mr. Rogers directed that any voucher that came in with her name on it be put at the head of the stack and processed as quickly as possible. Ordinarily, vouchers are processed on a strict chronological basis. [ODC Ex. 53, p. 6].

35. Ms. Marler testified that Respondent would scream at her and issue threats, such as "I'm going to have to hurt someone to show you that I mean business." [ODC Ex. 52, p. 8]. On February 10, 1993, Respondent again accused the office of losing vouchers and said that she was loading her gun and coming to Charleston to help them find her vouchers. [Id. pp. 8-9]. Mr. Rogers was concerned enough to arrange for a State Trooper to be

present in the office and provide Ms. Marler with a can of Mace. He had had reliable information that Respondent had previously been stopped entering a courtroom with a gun in her purse. Respondent did not appear. [ODC Ex. 53, pp. 6-7].

36. Ms. Marler testified that no other attorney calling about payment of vouchers ever threatened her with violence. [ODC Ex. 52, pp. 10-11].

37. Mr. Rogers had personal conversations with Respondent. They were usually acrimonious. Although Mr. Rogers has dealt with a lot of angry lawyers since the agency is chronically underfunded, Respondent's behavior was at the bottom of the scale "in terms of abusiveness, in terms of rudeness, in terms of unprofessional and unnecessary threats and accusations." [ODC Ex. 53, pp. 7-8].

Conclusions of Law

38. The ODC has not met its burden of proof with respect to Count II, by clear and convincing evidence that Respondent violated Rules 4.4 and 8.4(d) of the Rules of Professional Conduct, which provide:

RULE 4.4 Respect for Rights of Third Persons

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice.

Although there is evidence of such misconduct the Hearing Panel does not believe that it is sufficient to meet the clear and convincing standard as much of Respondent's verbal conduct is subject to characterization.

COUNT III - I.D. No. 91-03-193
Complaint of Barbara McCoy

Findings of Fact

39. The finding of jurisdiction contained in paragraph one of this Subcommittee Report are incorporated herein.

40. On January 23, 1991, Ms. McCoy retained Respondent to represent her in the adoption of her young grandson, who had been living with her for 1 1/2 years.⁷ Ms. McCoy's daughter, the mother of the child, did not object. She came with Ms. McCoy for the initial meeting. [ODC Ex. 54, p. 3-4, 6]. Ms. McCoy paid Respondent \$320.00. Two hundred fifty dollars of this amount was for a retainer and \$70.00 was for the filing fee. [ODC Ex. 26]. Respondent agreed to prepare the petition and other documents for signature within a week. She also set up an appointment to come to Ms. McCoy's house on February 2, 1991 to have the grandchild's biological parents and the paternal grandparents sign consent forms. Ms. McCoy tried to call Respondent on February 1. Respondent eventually return her calls that day and canceled the appointment because of the poor health of Respondent's mother. [ODC Ex. 54, p. 8].

41. Respondent said she would call Ms. McCoy within the week to set up another appointment. She did not do so. Ms. McCoy tried calling Respondent at her office and home without success. She finally sent Respondent a certified letter on April 25, 1991. [Id. at pp. 9-10; ODC Ex. 27]. Ms. McCoy requested that the documents be prepared within 10 days or her money be refunded.

⁷ Ms. McCoy was Barbara Davis at the time. She had been living with Fred McCoy for 20 years and had expressed willingness to marry him if it would help the adoption process. Mr. McCoy was not the biological grandfather of the child. By 1992 Ms. Davis had married Mr. McCoy.

42. Respondent did not answer the letter, but Respondent's receptionist called Ms. McCoy on May 2, 1991 to set up an appointment with William Bunner. Ms. McCoy said she wanted to speak with Respondent before setting up an appointment. The receptionist called Ms. McCoy back that same day to relay a message from Respondent. Respondent could not handle the adoption because of her mother's illness. She offered to reimburse Ms. McCoy her money by mail. [ODC Ex. 54, pp. 10-11].

43. Ms. McCoy told the receptionist that she would consult with her husband and call the office back to let them know whether or not she would, in fact, hire another attorney. On May 6, 1991, Ms. McCoy again spoke with the receptionist and said she had made an appointment with another attorney on May 10, 1991. She said she would come to Respondent's office on May 8, 1991, to pick up her \$320.00 and her file for the new attorney. [ODC Ex. 54, pp. 11-12].

44. On May 8, 1991, Ms. McCoy called Respondent's office and learned that the file had been removed from the office. Ms. McCoy told the receptionist that she would be in the office at 9:00 a.m., May 10, 1991, to pick up the file and the money. On May 10, 1991, Ms. McCoy stopped in Respondent's office. The receptionist told Ms. McCoy that Respondent would not return the file or money, and that she would have to proceed in some other manner to get them. [Ibid].

45. On May 28, 1991, Ms. McCoy filed a complaint in the Magistrate Court of Monongalia County, asking for the return her files which included, her grandchild's birth certificate, social security card, and insurance cards. She also requested a refund of \$320.00 plus court costs and legal fees. Personal service was effected June 3, 1991. [ODC Ex. 28].

46. On June 4, 1991, Respondent filed an adoption petition on behalf of Ms. McCoy in the Circuit Court of Monongalia County and scheduled a hearing for July 2, 1991. [ODC Ex. 30].

47. On June 24, 1991, Respondent filed an answer to the Magistrate, alleging that she "declined to suborn false swearing on behalf of plaintiff's interests." She also alleged that she had already expended \$495 in legal fees as of February 28, 1991. [ODC Ex. 31].

48. A trial on Ms. McCoy's civil action against Respondent was scheduled for September 17, 1991. Respondent had been served with a subpoena duces tecum on September 14, 1991 to bring her records regarding her representation of Ms. McCoy to the hearing. [ODC Exs. 32 & 34].

49. On September 15, 1991, Respondent prepared a motion to continue the hearing. She taped it on the door of attorney Mary Kay Hansen, who was representing Ms. McCoy. She filed it in Magistrate Court on September 16, 1991. [ODC Exs. 33 & 34]. She alleged illness since August 26, 1991 and outpatient surgery scheduled for September 16, 1991. The motion was denied by Magistrate Wheeler. [ODC Ex. 31].

50. On September 17, 1991, the Magistrate Court of Monongalia County granted Ms. McCoy's Motion for Default Judgment in connection with her case against Respondent. This action occurred after Respondent failed to appear for trial. The Magistrate further awarded Ms. McCoy \$250.00, plus interest, and court costs. [Ibid].

51. On September 27, 1991, Respondent filed a Motion to Set Aside the Judgment. [ODC Ex. 34]. Although the Magistrate wrote "granted" on the motion, it appears he scheduled a November 12, 1991 hearing on the motion, rather than reopening the case. [ODC Ex. 35]. On November 13, 1991, the Magistrate denied the motion. [Id.]

Letter of Mary Kay Hansen; ODC Ex. 31]. Respondent did not pay the \$250.00. [ODC Ex. 54, p. 18-19].

Conclusions of Law

52. The ODC has met its burden of proof with respect to Count III. By failing to follow through on obtaining the necessary consent and on filing the adoption petition until sued, 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.

53. By failing to return the file and refund a portion of the \$320.00, Respondent violated Rule 1.16(d) of the Rules of Professional Conduct, which provides:

RULE 1.16 Declining or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

54. By filing a petition for adoption after being terminated and then served with a civil summons by the client, Respondent violated Rule 1.16(a)(3) of the Rules of Professional Conduct, which provides:

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client, if:

(3) the lawyer is discharged.

55. Once there was a judicial determination that Respondent needed to return a portion of a fee to Ms. McCoy, that money constituted client funds, and Respondent had an obligation under Rule 1.15(b) of the Rules of Professional Conduct to return client property. See, e.g., Lawyer Disciplinary Board v. Friend, 489 S.E.2d 750 (W. Va. 1997)(Lawyer who was found by Circuit Court to have overcharged an estate was required to make restitution). Respondent failed to do so, and this is a separate violation of Rule 1.15(b).

COUNT IV - I.D. No. 93-02-428
Complaint of Alice E. Young

Findings of Fact

56. The finding of jurisdiction contained in paragraph one of this Subcommittee Report are incorporated herein.

57. The minor daughter of Alice E. Young received treatment at the Monongalia General Emergency Room in October 18, 1991. Ms. Young believed that she and her daughter had a tort claim against a doctor there. [ODC Ex. 55, p. 4].

58. In 1992, Ms. Young retained Respondent to represent her as guardian for her daughter and individually in a claim against the doctor. Respondent requested \$75.00 in cash for filing fee. Ms. Young gave Respondent all of her daughter's medical records. [Id. at 4-6].

59. In 1993, Ms. Young met with Respondent to review a draft of a complaint. Respondent made handwritten corrections as a result of their discussion. [ODC Ex. 36]. Although Respondent stated the complaint would be filed sometime that week or the next week, it was not filed. [ODC Ex. 55, pp. 6-7].

60. Ms. Young became dissatisfied with Respondent's inactivity and became concerned that her statute of limitations would expire.⁸ She discharged Respondent and requested the return of the \$75 filing fee and her daughter's medical records. She called Respondent at her office and her house. She traveled to Respondent's office in Morgantown and found it closed. She went to Respondent's house twice. On the second occasion, Respondent was home. Respondent told Ms. Young the medical records were in her Maryland office and she would get them right away. [Id. at 8-9]. Respondent did not do so.

61. Ms. Young filed an ethics complaint and also spoke with Circuit Court Judge Larry Starcher. She alleges that she left a note to that effect on the door of Respondent's residence. [Id. at 9-10; ODC Ex. 37]. Shortly after that, she received her records. Complainant asserted that she had never been reimbursed the \$75.00.

Conclusions of Law

62. The ODC has not proved its charge by clear and convincing evidence. By failing to refund Ms. Young her filing fee, Respondent violated Rule 1.15(b) of the Rules of Professional Conduct as set forth above. The Hearing Panel finds that the Record is somewhat unclear and that the burden of proof cannot be met.

63. The Subcommittee additionally notes that Respondent was not charged with violating Rule 1.16(d) of the Rules of Professional Conduct by failing to return Ms. Young's papers. Ms. Young did not mention this in her original ethics complaint.

⁸ The Subcommittee observes that in West Virginia there is a two year statute of limitations for the tort of outrage, which is also called the intentional infliction of emotional distress. Courtney v. Courtney, 190 W. Va. 126, 437 S.E.2d 436 (1993).

COUNT V - I.D. No. 93-01-065
Complaint of Donna M. Thompson

Findings of Fact

64. The finding of jurisdiction contained in paragraph one of this Subcommittee Report are incorporated herein.

65. Arthur and Donna Thompson purchased a new 1986 Chevrolet Celebrity from University Chevrolet. They believed the salesman had orally inflated the sticker price and had not provided them with the Manufacturer's List Price label until they had already signed documents and had traded in their other vehicle. After trying to resolve the matter with the dealership, the Thompsons decided to consult a lawyer. A friend recommended Respondent, and they met with Respondent. Respondent advised them to file a lawsuit in the Magistrate Court of Monongalia County and agreed to appear on their behalf at the trial. [ODC Ex. 56, pp. 4-5].

66. On July 26, 1988, the Thompsons filed a lawsuit against the salesman in the name of "Bud Gamble/University Chevrolet" and whom they understood to be the owner of the dealership, "Fred Crouch/University Chevrolet" in the Monongalia County Magistrate Court. They did not name the corporate owner of the dealership, Clearbrook Corporation. Mr. Gamble filed a third-party complaint against Clearbrook. [Court file, ODC Ex. 38].

67. A trial scheduled for October 5, 1988 was continued on the motion of a defendant. Ms. Thompson filed a motion to continue the next trial date scheduled in October because Respondent was ill. When the Magistrate denied the motion, Ms. Thompson and Respondent both filed documents to remove the case to Circuit Court as a method of obtaining a continuance. [Court file, ODC Ex. 38].

68. Mr. Gamble and Clearbrook filed motions to dismiss for failure to state a cause of action . The motions were heard on November 28, 1989. Mr. Gamble's motion was granted, and the Thompsons were given 20 days in which to file an amended complaint. Respondent filed an Amended Complaint on December 18, 1989. She did not name Clearbrook as a defendant, but made allegations against the dealership in the complaint. When Mr. Gamble filed an answer, he asserted a cross-claim against "Defendant, Clearbrook Corporation". [Id.]

69. Mr. Gamble filed another motion to dismiss. Clearbrook filed a motion to dismiss on the grounds that there was no third-party complaint pending against them. A hearing was held on January 12, 1990. The Court denied Mr. Gamble's motion to dismiss and granted the motion of Clearbrook, with leave for the Thompsons to serve a summons and complaint upon the corporation, making it a party defendant. This Order was entered January 19, 1990. [Id.]

70. Respondent took no further action in the case. Ms. Thompson attempted to contact Respondent by telephone at the office and at home. On those occasions when she would reach Respondent, Respondent gave various excuses--income tax return deadlines, elections, personal illness, family illness. [ODC Ex. 56, pp. 8-9].

71. Ms. Thompson eventually talked to the presiding Judge, Honorable Robert Stone, because she was concerned that the case might be dismissed for lack of prosecution. She learned it had not been dismissed. She then attempted to discharge Respondent by sending her two certified letters, one dated August 31, 1992 and the other dated September 20, 1992. Both letter were returned unclaimed. [Id. at 9-10].

72. In the meantime, Respondent heard about Ms. Thompson's conversation with the Judge, and thought the case was in danger of being dismissed. On or about September 2, 1992, Respondent sent a letter to Judge Stone requesting a pretrial conference date, a motion for reinstatement, a proposed reinstatement order and a check. Judge Stone wrote to her on September 9, 1992, informing her that the motion was unnecessary. [ODC Ex. 38].

73. The Thompsons were unsuccessful in obtaining other counsel. Clearbrook had gone out of business.

Conclusions of Law

74. The Hearing Panel does not find that Respondent failed to act diligently in pursuing the case, and thus violated Rule 1.3 of the Rules of Professional Conduct based on the above conduct. Thus this charge is dismissed for a failure of proof.

UNLAWFUL PRACTICE CHARGE

75. The Hearing Panel also took evidence to determine whether Respondent violated the Supreme Court's Orders of July 8, 1994 and July 13, 1995 by practicing law.

Findings of Fact

76. Eleanor Moore testified that she lived in Reedsville, West Virginia during the duration of the events about which she testified. [Tr. 25]. Her husband grew up with Respondent and went to school with William Bunner. [Tr. 28].

77. Mrs. Moore testified that they retained Respondent in 1991 with respect to a products liability case arising from adverse effects suffered by their son from a DPT vaccination shot. [Tr. at 19-20]. By federal statute, all products liability cases involving vaccines are heard before the United States Court of Federal Claims.

78. Mrs. Moore testified that she had heard rumors about Respondent's ability to practice and asked Respondent about the rumors. Respondent said that her brother could not practice, but she still could. [Tr. 20].

79. In 1996, Mrs. Moore received a letter which said they needed an expert witness. [Tr. 23].⁹ She wanted to discuss this with Respondent, but had difficulty locating her. No one answered Respondent's telephone. Mrs. Moore finally located the trailer park in Sabraton. [Tr. 29]. Respondent told Mrs. Moore that she was too busy to look for an expert witness. Mrs. Moore became upset and found another attorney, Brent Beveridge, in the yellow pages. [Tr. 23]. The Moores told Mr. Beveridge that Patricia Bunner had been representing them. Mr. Beveridge contacted the Office of Disciplinary Counsel while the Moores were still in his office to determine if Respondent was still licensed. [Id.] The Petition for Contempt filed by the Office of Disciplinary Counsel recites that Mr. Beveridge called the ODC on September 30, 1996. [Tr. 26]. This was the first time the Moores learned of Respondent's administrative suspension.

80. The docket sheet from the United States Court of Federal Claims shows that Eleanor and Larry Moore filed a petition on behalf of their son, Allen, on January 31, 1991.

⁹ The docket sheet reflects that "Respondent's Report" was filed by the Secretary of Health and Human Services on September 9, 1996.

[ODC Ex. 42]. No activity occurred until the Chief Special Master filed a scheduling order on June 6, 1994.

81. The docket sheet does not reflect that Respondent made an appearance as counsel for the Moores until October 20, 1995. However, the pleadings filed by Respondent support Mrs. Moore's testimony that Respondent was supposed to be representing them.

82. The Respondent in the DPT case, the Secretary of Health and Human Services, filed a pleading entitled "Respondent's Preliminary Review (Records) on September 19, 1994. It appears that the Moores were supposed to provide Allen Moore's medical records in response to this pleading.

83. The Moores did not comply with the scheduling order, and the Chief Special Master entered an order threatening dismissal if they did not comply by July 14, 1995. The Moores still did not comply, and the Chief Special Master dismissed the Moores' claim on September 29, 1995. [ODC Ex. 42].

84. On October 20, 1995, Respondent filed a Motion to Set Aside Order of Special Master and well as a Notice of Appearance of Counsel. [ODC Exs. 44 & 45]. In her Motion, Respondent asserted that she did not receive a copy of the June 6, 1994 Order because she had been "forced to move her law office from Morgantown, West Virginia while she was undergoing physical, cognitive and psycho-therapy [sic] following a car accident April 19, 1993 that had resulted in head trauma and severe depression." She stated that she first became aware of the Order when the Department of Justice contacted her in January of 1995.¹⁰

¹⁰ The docket sheet reflects that a pleading entitled "Second Respondent's Preliminary Review (Records) was filed on January 13, 1995.

85. In her Motion, Respondent alleged that she had complied with the Government's discovery request and sent Allen Moore's medical records in March of 1995. To support this allegation, she attached as Exhibit A to her Motion, a pleading entitled "Response for Records Request". [ODC Ex. 43]. The "Response for Records Request" recites that the medical records are being provided herein. There is a typed notation at the bottom left-hand corner of the page which reads "Dated: March 18, 1885 [sic]". However, the docket sheet does not show that this pleading was filed.

86. Respondent further recited in her Motion that her Fairview home, which contained the Moore file, burned down on May 11, 1995. She requested that the Department of Justice send her a copy of the medical records previously submitted which was done September 7, 1995. However, the package was mailed to the Fairview address and left with an elderly neighbor. She did not learn of the package until October 9, 1995. She also alleged that she was still in a "state of cognitive and perceptual deficits" and had been found by a psychologist to be disabled and qualified for Supplemental Security Income. She asked that any correspondence be sent to her address at the La Mesa Trailer Park. [ODC Ex. 45].

87. The Chief Special Master granted the Motion on October 26, 1995. [ODC Exs. 42 & 45]. Respondent thereafter filed pleadings entitled "Discovery" (12/26/95) [ODC Ex. 46]; and "Supplemental Discovery and Request for Extension until April 20" (4/3/96) [ODC Ex. 47].

88. An Administrative Analyst for the United States Court of Federal Claims wrote to Ms. Goodman stating that the Court was in the process of instituting reciprocal disciplinary proceedings.

Conclusions of Law

89. The ODC has established by clear and convincing evidence that Respondent continued to practice law after the Court placed her on inactive status in 1994 and administratively suspended her law license in 1995.

90. Respondent continued to have contact with the Moores as clients; she represented herself to be a licensed attorney in good standing to a Federal Court and filed pleadings on behalf of the Moores as late as April, 1996. She did not disclose to the Moores her true status as a suspended lawyer and misrepresented her status to them.

91. U.S.C.S. Claims Ct. Rule 81(d)(8) only permits lay representation by a member of a party's immediate family. All others must be represented by an attorney who is admitted to practice in the Court of Federal Claims. Attorneys who are admitted to practice in the highest court of any state may be admitted to practice in the Court of Federal Claims. Rule 81(b)(1).

92. Thus, Respondent practiced law in violation of her suspension when she represented the Moores before the United States Court of Federal Claims.

RECOMMENDED DISCIPLINE

Before rendering this decision the Sub-Committee Panel had Stayed its final decision pending the outcome of the Respondent's criminal trial, what was originally felony charges. These charges were later reduced to misdemeanor charges to which the Respondent entered a plea of guilty. Disciplinary action regarding these criminal matters are set for hearing in December 14, 1999 in ID case number 98-02-322, Supreme Court case number 25-885. It had been represented by Respondent's counsel and Assistant Disciplinary Counsel, Amie

Johnson, that perhaps an Agreed Stipulation of Fact, and Conclusions of Law, and the Recommendation of Discipline could be agreed upon to encompass both this case (Supreme Court number 22331) and the pending charges relating to the criminal conviction. However, that was not consummated and, accordingly, the Sub-Committee Panel decided to issue this Opinion and set the other matter down for hearing.

As this Opinion details the proceedings against Respondent have been long and torturous and no doubt have been complicated due to Respondents obvious emotional and mental instability. Not only is the Sub-Committee Panel troubled by the transgressions and ultimate findings of violation by the Respondent but the Panel also is deeply concerned that the Respondent is not a fit person to practice law and represent the serious interest of the citizens of this State in legal matters. Since the Respondent has been on suspension all during the pendency of this matter there was no urgency to issue this Opinion pending the outcome of the criminal action, it is clear to this Panel that the Respondent should not be able to practice law in this State at this time. The Respondent's repeated disregard for matters intrusted to her care and her obvious attempts to cover up failings and wrong doings can not be tolerated by the Bar or the citizens of this State. Accordingly, the Sub-Committee Panel recommends to the Supreme Court that the following action be taken against the Respondent:

- (1) Respondent's law license should be indefinitely suspended;
- (2) Respondent cannot petition for reinstatement for two years beginning on the date of the Supreme Court's Order adopting this recommendation;
- (3) In order to be reinstated, Respondent must demonstrate by expert medical and/or psychological testimony that she is presently capable of practicing law;

(4) If Respondent is reinstated, then she is to be supervised in her practice for a period of 12 months following her reinstatement by a supervising attorney in her local practice area who is in good standing with the West Virginia State Bar; Supervision shall be on criteria as set forth by the Lawyer Disciplinary Counsel, including periodic visits with the supervising attorney, review of trust account activities, calendaring, client contacts, and other aspects of practice, and if these criteria cannot be agreed upon, then the Subcommittee Hearing Panel shall decide any disputes; In addition, Respondent must provide evidence of professional liability insurance in the amount of \$1,000,000.00 in order to be reinstated and practice during this 12 month supervisory period;

(5) Respondent shall pay for the reasonable costs of this proceeding.

Usually the Hearing Panel will give credit for any time spent on inactive status or administrative suspension to an attorney how is ultimately recommended to be suspended. However, because of Respondent's deliberate disregard for the Supreme Court's Order not to practice law or have further contact with her clients, the Sub-Committee Panel does not believe that such credit should be given in this instance and therefore adopts the recommendation that the recommended two year suspension begin upon the date of the Supreme Court's Order adopting this recommendation.

Sub-Committee Hearing Panel believes that the above recommendations are appropriate in this matter to protect the public from the type of conduct described in this decision.

Upon filing of this decision and recommendation with the Supreme Court of Appeals, the Clerk is requested to send copies of the same to Dana Shay, Esquire, 211 Adams Street,

Suite 301, Fairmont, West Virginia, 26554, counsel for Respondent, and Amie L. Johnson,
Assistant Lawyer Disciplinary Counsel for the Office of the Disciplinary Counsel.

David J. Romano
David J. Romano, Chairperson

Date: January 10, 2000

Claudia West Bentley
Claudia West Bentley, Esquire

Date: 22 December 1999

Sister Mona Farthing
Sister Mona Farthing

Date: 12-17-99