

MAY 28 1999

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 21st day of May, 1999, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 25409

John A. Farmer, a former member of The West Virginia State Bar, Respondent

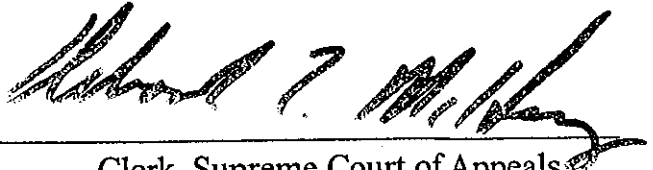
On a former day, to-wit, March 25, 1999, came the complainant, the Lawyer Disciplinary Board, by Amie L. Johnson and Steven Johnston Knopp, Lawyer Disciplinary Counsel, and presented to the Court its motion in writing to dismiss the above-captioned proceeding as moot in light of this Court's action in Lawyer Disciplinary Board vs. John A. Farmer, No. 25875.

Upon consideration whereof, the Court is of opinion to and doth hereby grant said motion to dismiss. It is therefore ordered that the above-captioned proceeding be, and it hereby is, dismissed from the docket of this Court. It is further ordered that respondent comply with Rule 3.28 of the Rules of Lawyer Disciplinary Procedure.

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

A True Copy

Attest:


Clerk, Supreme Court of Appeals

BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA

IN RE: JOHN A. FARMER, an active member of
The West Virginia State Bar

I.D. No.: 96-03-461
97-03-543
98-01-078
98-01-276
98-01-299
98-01-300

STATEMENT OF CHARGES

YOU ARE HEREBY notified that a Hearing Panel Subcommittee of the Lawyer Disciplinary Board will hold a hearing pursuant to Rules 3.3 through 3.16 of the Rules of Disciplinary Procedure, upon the following charges against you:

COUNT I
Complaint of Anna L. Collier
I.D. No. 96-03-461

1. Respondent, John A. Farmer, is a lawyer practicing in Clarksburg, Harrison 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 September 23, 1991.

2. Complainant, Anna L. Collier, saw Respondent Farmer on March 24, 1996. She was referred to him by "Criss Cross", a United Way agency. At the time of her visit, he was employed by Siegrist, Spelsberg, White, Martin and Conley, a firm with offices in Clarksburg.

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3. At the time of her March 24, 1996, visit to Respondent, Complainant had been a tenant of one Leonard Gene Pappas. Complainant described for Respondent how her landlord had trespassed in her apartment and had taken her clothes, furniture, appliances, food, and sentimental items.

4. At the time of her initial visit, Complainant paid Respondent a retainer of ninety dollars (\$90.00). Respondent assured Complainant that he would get everything back for her. Respondent told Complainant not to worry.

5. Following payment of the retainer, for a period of time Complainant called Respondent's office once or twice a week. Respondent refused to speak to Complainant, or offered to return her calls, without doing so.

6. In addition to complainant making several calls to Respondent, Thomas E. Mack, Complainant's friend, also made telephone calls and sent messages to Respondent by facsimile on June 26, 1996, and on August 16, 1996. Mr Mack attached collection notices which Complainant had received regarding items seized by her landlord. Respondent made no response to these facsimile messages, but did speak to Mr. Mack on two occasions.

7. In one conversation with Mr. Mack, Respondent stated that the case would be going to court soon, and that Respondent would call him back with the court date and time. No call ever came to Complainant or to Mr. Mack advising of the court date.

8. After repeated telephone calls to Respondent went unreturned, on November 19, 1996, Mr. Mack called the Harrison County Circuit Clerk. Mr. Mack was informed that no suit had been filed in that court by Respondent on behalf of the Complainant, Anna L. Collier, against the landlord, Leonard Gene Pappas.

9. Additional calls from Mr. Mack to Respondent and an additional call from Complainant to Respondent about this discovery went unreturned.

10. For a period of more than two years after he was retained to pursue the matter of the landlord's seizure of Complainant's property and belongings, Respondent did not bring suit or act in any way to bring the matter to a conclusion, despite the client's and her friend's many requests by telephone and by fax to do so.

11. By failing to file the Petition, and failing to docket hearings to pursue the client's desired action, Respondent violated Rule 1.3 of the West Virginia Rules of Professional Conduct. Rule 1.3 states:

Rule 1.3. Diligence

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

12. By failing to communicate with his client and failing to advise her of the status of the matter which he had been retained to pursue, Respondent violated Rule 1.4(a) of the West Virginia Rules of Professional Conduct. Rule 1.4(a) states:

Rule 1.4 Communication

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

13. By failing to file the suit, and by advising the client, through her friend, that hearing dates would be set, and that he would advise her of those dates, when in fact no complaint or pleading of any kind had been filed, Respondent violated Rule 8.4(c) of the West Virginia Rules of Professional Conduct. Rule 8.4(c) states:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to :

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

COUNT II
Complaint of John P. Snyder
I.D. No. 97-03-543

14. The allegations contained in Paragraph No. 1 are realleged and incorporated herein.

15. Complainant, John P. Snyder, had Respondent represent him in a divorce action. The matter was styled *Mary A. Snyder v. John Paul Snyder*, Civil Action No. 92-C-291-2, in the Circuit Court of Harrison County, West Virginia. Later, in 1994, he retained Respondent to file a petition for change of custody of his teenage son.

16. On August 22, 1994, Complainant's son, who had attained the age of fourteen, executed an affidavit which affirmed that he wished to live with his father, Complainant herein. The affidavit was provided to Respondent, who prepared a Petition for Change of Custody.

17. Respondent represented to his client that the petition had been filed in Harrison County Circuit Court and he had contacted the Family Law Master to get a hearing date set. After discussions with the ex-wife's attorney, Respondent agreed to entry of an order without a hearing.

18. For a period of more than three years since the order, Respondent did not act to bring the matter to a conclusion, despite the client's many requests in person and by telephone to do so.

19. Complainant was advised by Respondent of several dates for hearings, but, before each of these dates, he was advised by Respondent of a cancellation.

20. Complainant made a telephone call to Respondent on October 28, 1997, on which date Respondent had earlier advised him that the hearing had been set. Respondent stated to Complainant that the hearing had been held the previous day, but no one showed up.

21. Complainant went to the Harrison County Court House, and obtained a copy of the case docket sheet for the matter. He learned that the matter had not been set for hearing on October 28, 1997, and that no Petition for Change of Custody had ever been filed by Respondent in his case on his behalf. Subsequently, he filed his complaint with the Lawyer Disciplinary Board.

22. The complaint was served upon Respondent by United States Mail on January 12, 1998. No answer being received, on February 24, 1998, Disciplinary Counsel sent a second copy of the complaint by Certified Mail. When no response had been received to either copy of the complaint, a subpoena from the Investigative Panel of the Lawyer Disciplinary Board was served upon Respondent by the Harrison County Sheriff's Department. Respondent's written verified response was received on April 16, 1998. Respondent made an appearance before Disciplinary Counsel and the Investigative Panel Chairman on May 27, 1998.

23. By failing to ascertain the means by which the client desired to pursue the action, and by failing to carry out the client's wishes to pursue a Petition for Change of Custody, Respondent violated Rule 1.2(a) of the West Virginia Rules of Professional Conduct. Rule 1.2(a) states:

Rule 1.2. Scope of representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of the representation, . . . and shall consult with the client as to the means by which they are to be pursued. . . .

24. By failing to file the Petition, and failing to docket hearings to pursue the client's desired action, Respondent violated Rule 1.3 of the West Virginia Rules of Professional Conduct.

Rule 1.3 states:

Rule 1.3. Diligence

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

25. By failing to communicate with his client and failing to advise him of the status of the matter which he had been retained to pursue, Respondent violated Rule 1.4(a) of the West Virginia Rules of Professional Conduct. Rule 1.4(a) states:

Rule 1.4 Communication

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

26. By failing to file the Petition, by advising the client that the Petition had been filed, and by advising the client of hearing dates, when in fact no dates had been set, Respondent violated Rule 8.4(c) of the West Virginia Rules of Professional Conduct. Rule 8.4(c) states:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to :

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

27. By failing to answer the complaint, and causing the Investigative Panel to issue a subpoena to him to provide a response to the allegations of the complaint, Respondent violated Rule 8.1 of the West Virginia Rules of Professional Conduct. Rule 8.1 states:

Rule 8.1. Bar admission and disciplinary matters.

[A] ... lawyer in connection with ... a disciplinary matter, shall not:

...
(b) ... fail to respond to a lawful demand for information from... a disciplinary authority....

COUNT III
Complaint of George Todd
I.D. No. 98-01-078

28. The allegations contained in Paragraph No. 1 are realleged and incorporated herein.

29. George Todd retained Respondent to represent Mr. Todd on three separate legal matters.

30. One of the legal matters was to handle Mr. and Mrs. Todd's adoption of their granddaughter. There is a dispute as to when Respondent was retained, but it was sometime in 1995 or spring 1996.

31. Respondent wrote a letter to the child's school on May 21, 1996, advising that the adoption proceedings should be finalized by the end of June or early July [1996]. A copy of this letter was provided to Mr. Todd.

32. Respondent prepared a consent to adoption form, which he gave to Mr. Todd. Mr. Todd had the child's parents sign the consent form. Mr. Todd returned the completed consent form to Respondent.

33. Thereafter, Respondent lost the completed consent form. Respondent did not advise Mr. Todd until months or years later that a new form needed to be completed. It is alleged that Respondent did not advise that a new form was needed until January 1998.

34. Respondent never told Respondent that he had lost the consent form, rather Respondent advised in January 1998 that the prior form was too old to be used, and a new one was required.

35. Respondent never filed the adoption petition on the Todd's behalf.

36. On multiple occasions, Respondent's led his clients to believe that the adoption petition had been filed, when in fact it had not been filed.

37. At various times, Respondent told Mr. Todd that court dates had been set, but later called to say that the hearings had been continued. This was not true.

38. On one occasion, Respondent told Mr. Todd that the case was delayed because the Judge was too busy, but that the case had been transferred to another Judge, and would be resolved shortly thereafter. This was not true.

39. Another of the legal matters for which Respondent was hired involved problems Mr. Todd was having with a GM Heavy Truck he bought for his trucking business [hereinafter the "GM Heavy Truck matter"]. The GM Heavy Truck was purchased on or about September 28, 1995, and subsequently was in for repairs dozens of times, so Mr. Todd sought legal assistance from Respondent.

40. Mr. Todd hired Respondent for the GM Heavy Truck matter in the fall of 1995.

41. Mr. Todd desired Respondent to file suit against the GM Heavy Truck manufacturer and the dealer.

42. Respondent never filed suit in the GM Heavy Truck matter.

43. On multiples occasions, Respondent misled Mr. Todd into believing that suit had been filed in the GM Heavy Truck matter. Respondent told Mr. Todd to plan on being in Court on specified dates or weeks, but later would say that these hearings were continued or cancelled. There was never a court date set, however, as suit had not been filed.

44. Because Respondent had told him that there would be a hearing on a specified day in December 1995, Mr. Todd drove from the Clarksburg area to Parkersburg, West Virginia, for the hearing on the GM Heavy Truck matter. When Mr. Todd arrived, no one was there for any hearing.

45. On one or two occasions, prior to January 28, 1997, Respondent communicated with Heino Scharf, a representative of the GM Heavy Truck manufacturer.

46. By letter dated January 28, 1997, Mr. Scharf requested that Respondent provide a list of problems with the truck. Respondent never replied to this request.

47. Respondent drafted a sketchy, handwritten complaint in the GM Heavy Truck matter, but it was never finalized.

48. Mr. Todd did not learn until much later that a lawsuit had never been filed in the GM Heavy Truck matter.

49. Mr. Todd had financed the expensive GM Heavy Truck, putting up most of his personal assets as collateral. Due to extreme financial problems, the truck was repossessed and Mr. Todd filed bankruptcy.

50. Mr. Todd fired Respondent in March 1998. Mr. Todd and his new lawyer tried unsuccessfully for several months to obtain the client file in the GM Heavy Truck matter, but Respondent reported he lost the file.

51. The third legal matter for which Mr. Todd hired Respondent was to assist with a dispute over repair costs in a different truck which Mr. Todd bought from E.R. Nunn [hereinafter the "E.R. Nunn matter"].

52. Mr. Todd hired Respondent for the E.R. Nunn matter in 1995, and fired him March 1998.

53. Respondent wrote one letter in the E.R. Nunn matter, a letter to Mr. Nunn dated September 18, 1995. There is no evidence that Respondent took any further action on behalf of his client on this matter.

54. Respondent has violated Rule 1.3 of the Rules of Professional Conduct, as set forth above.

55. Respondent has violated Rule 1.4(a) of the Rules of Professional Conduct, as set forth above.

56. Respondent has 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 the fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

57. Respondent has violated Rule 8.4(c) of the Rules of Professional Conduct as set forth above.

COUNT IV
Complaint of Office of Disciplinary Counsel
I.D. No. 98-01-276

58. The allegations contained in Paragraph No. 1 are realleged and incorporated herein.
59. Respondent was representing brothers Jim and Joe Guzzi, plaintiffs in litigation. The representation began in the Spring of 1996.
60. Respondent filed a lawsuit on the Guzzi's behalf on October 7, 1996.
61. Thereafter, Respondent drafted interrogatories for the opposing side. Respondent did not send these interrogatories to opposing counsel.
62. Respondent's client's were pushing him to move the case and discovery along, and wanted to know the opposing party's position. In order to pacify his clients, Respondent himself drafted answers to these interrogatories.
63. Respondent signed opposing counsel's name to the interrogatory "answers" which he had drafted.
64. Respondent provided a copy of these interrogatory "answers" to his clients.
65. Respondent provided these interrogatory "answers" to his clients for the purpose of misleading his clients into believing that opposing counsel had provided the answers.
66. Respondent later told his clients what he had done.
67. Respondent did not file the interrogatory "answers" with the Court.
68. The clients terminated the representation on July 8, 1997, and obtained new counsel.
69. Respondent violated Rule 1.3 of the Rules of Professional Conduct, as set forth above.
70. Respondent violated Rule 1.4(a) of the Rules of Professional Conduct, as set forth above.

71. Respondent violated Rule 8.4(c) of the Rules of Professional Conduct, as set forth above.

COUNT V
Complaint of Constance R. Bowen
I.D. No. 98-01-299

72. The allegations contained in Paragraph No. 1 are realleged and incorporated herein.

73. Constance Bowen purchased a 1996 model Sable in December 1995. By June 1996 she had taken the vehicle in for repairs approximately six to eight times. Ms. Bowen hired Respondent in June 1996 to pursue a lemon law case.

74. Respondent told Ms. Bowen that the matter should not take very long to resolve, and that after a request is made of the manufacturer, vehicle owners can usually get their money back within 21 days. Respondent told Ms. Bowen's son, James Bowen, Jr., that it could take 90 days.

75. Respondent apparently wrote one or two letters to Ford, and telephoned a Ford representative on one occasion. There was a discussion of a replacement vehicle, but upon Respondent's advice, Ms. Bowen instead wanted her money back.

76. In January 1997, Respondent told Ms. Bowen that she should go shopping for a car, because a settlement was close. No settlement ever materialized.

77. In June 1997, Ms. Bowen advised Respondent that the manufacturer's warranty was about to expire on the vehicle.

78. Respondent prepared a lawsuit to file against Ford. However, this suit was never filed.

79. On multiple occasions, Respondent promised to stop by Ms. Bowen's home to bring her papers to sign. Respondent failed to do so.

80. At one point, Respondent told Ms. Bowen that he had prepared a lawsuit. Ms. Bowen understood from his statement that the suit had been filed. Although Respondent knew Ms. Bowen believed that the suit had been filed, Respondent took no steps to correct her belief.

81. Later, Ms. Bowen telephoned Respondent, and Respondent told her that the case was on the docket for hearing in March 1998. Ms. Bowen heard nothing further from Respondent about this hearing.

82. In April 1998, Ms. Bowen telephoned the Harrison County Circuit Clerk's Office and learned that a lawsuit had never been filed.

83. Ms. Bowen then telephoned Respondent, who informed her that the Clerk's office was incorrect, and that the case was on the docket. This was not true, as in fact the suit had never been filed.

84. In May 1998, Ms. Bowen called Respondent and told him that it had been one year since the 36,000 mile warranty had expired. Respondent told her not to worry, that he would take care of it.

85. Ms. Bowen discharged Respondent in or about June, 1998. The lawsuit had never been filed.

86. During the last eight months of the representation, Ms. Bowen telephoned Respondent frequently, approximately two to four times a week, to check on the status of the case. Respondent gave her various excuses for the delays in her case, but did not tell her the suit had not been filed.

87. Respondent has violated Rules 1.3 of the Rules of Professional Conduct, as set forth above.

88. Respondent has violated Rule 1.4(a) of the Rules of Professional Conduct, as set forth above.

89. Respondent has violated Rule 8.4(c) of the Rules of Professional Conduct, as set forth above.

COUNT VI
Complaint of Constance J. Husted
I.D. No. 98-01-300

90. The allegations contained in Paragraph No. 1 are realleged and incorporated herein.

91. In July 1997, Constance Husted hired Respondent to represent her in filing for a divorce.

92. On her own, Ms. Husted filed a domestic violence complaint against her husband, which resulted in a domestic violence order. Respondent did not attend any hearings on this domestic violence matter, although he attended -- without participating -- a hearing involving child abuse charges against the husband. The child abuse charges involved Mr. Husted's child from a previous marriage.

93. Respondent told Ms. Husted that he would take steps to extend the domestic violence order she had obtained, including by filing the divorce complaint. Ms. Husted later learned that Respondent failed to take any steps to extend the order, and failed to file the divorce complaint. Ms. Husted was experiencing problems with her husband appearing at her home acting in a loud, disruptive manner.

94. Respondent drafted a complaint for divorce, and had Ms. Husted review it and sign a verification. Respondent also had Ms. Husted complete an affidavit of indigency.

95. Respondent never filed the complaint for divorce or affidavit of indigency.

96. Respondent met with Ms. Husted's estranged husband. There is a disagreement as to what was discussed. Mr. Husted told Ms. Husted that Respondent had offered him unsupervised visitation of their child in order to resolve the case, but Ms. Husted was opposed to this, and wanted supervised visitation only.

97. Respondent led Ms. Husted to believe that her complaint for divorce had been filed. When Ms. Husted repeatedly would call Respondent to check on the status of the divorce, he would tell her that they would be going to court soon.

98. Respondent told Ms. Husted that he was having difficulty in obtaining service of process, that the process server had made errors, etc. However, Respondent had never even filed the complaint, and thus there were no papers to be served.

99. In March 1998, Respondent told Ms. Husted that a hearing had been scheduled before the Family Law Master in April 1998. In April, Respondent told Ms. Husted that the hearing had been postponed until May.

100. In April 1998, Ms. Husted telephoned the Clerk's office and discovered that Respondent had never filed the divorce complaint.

101. Ms. Husted then contacted Respondent, who said that he would investigate the matter. Respondent later said that the divorce had been filed, but the Clerk's office had misplaced it.

102. Two weeks later, Ms. Husted again telephoned the Clerk's office, and again learned that a divorce complaint had never been filed.

103. Ms. Husted discharged Respondent in the end of June 1998, and obtained other counsel.

104. Respondent has violated Rules 1.3 of the Rules of Professional Conduct as set forth above.

105. Respondent has violated Rule 1.4(a) of the Rules of Professional Conduct as set forth above.

106. Respondent has violated Rule 8.4(c) of the Rules of Professional Conduct as set forth above.

AGGRAVATING FACTORS

107. As an aggravating factor, in the course of investigating other pending ethics complaints against Respondent, Disciplinary Counsel directed Respondent to provide a list of his open cases. On June 13, 1998, Respondent provided a list of these cases. Although Connie Husted was still his client at the time, her case does not appear on Respondent's list. Respondent was required to respond truthfully to requests for information pursuant to Rule 8.1(b) of the Rules of Professional Conduct.

108. As an aggravating factor, Respondent has exhibited a pattern and practice of violating Rules of Professional Conduct 1.3, 1.4(a) and 8.4(c).

Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a violation of the Rules of Professional Conduct and has issued this Statement of Charges.

As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 30 days of service of this Statement of Charges by the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

DATED this 17th day of October, 1998.



E. Kent Helles, Chairperson *Pro Tempore*
Investigative Panel of the
Lawyer Disciplinary Board

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STATE OF WEST VIRGINIA

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At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 17th day of March, 1999, the following order was made and entered:

Lawyer Disciplinary Board, Petitioner

vs.) No. 25875

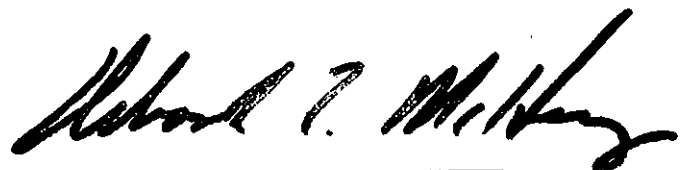
John A. Farmer, a member of The West Virginia State Bar, Respondent

On a former day, to-wit, March 16, 1999, came the petitioner, the Lawyer Disciplinary Board, by Steven Johnston Knopp and Amie L. Johnson, Lawyer Disciplinary Board Counsel, and presented to the Court, pursuant to Rule 3.25 of the Rules of Lawyer Disciplinary Procedure, its petition seeking the annulment of the license to practice law in the State of West Virginia of the respondent, John A. Farmer, a member of The West Virginia State Bar, with respondent's voluntary consent thereto.

Upon consideration whereof, the Court is of opinion to and doth hereby grant said petition. It is therefore ordered that the license to practice law in the State of West Virginia of the respondent, John A. Farmer, be, and it hereby is, annulled, said annulment effective this date.

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

A True Copy



Clerk, Supreme Court of Appeals