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STATE OF WEST VIRGINIA

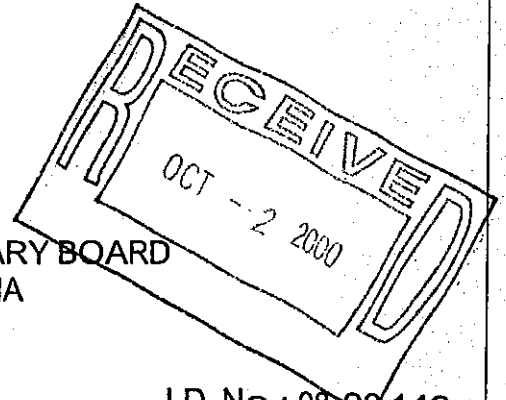
At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 26th day of October, 2000, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 25925

Don A. Humberson, a member of The West Virginia State Bar, Respondent

On a former day, to-wit, October 2, 2000, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Timothy L. Sweeney, its chairperson, and presented to the Court Stipulations and Recommended Decision in the above-captioned proceeding, wherein the Hearing Panel Subcommittee of the Lawyer Disciplinary Board and the respondent, Don A. Humberson, agree to the following stipulations for violating Rule 8.4(c) and (d) of the Rules of Professional Conduct: (1) respondent's license to practice law in the State of West Virginia be suspended for a period of ninety days with automatic reinstatement; (2) respondent be subject to random drug testing for a period of eighteen months, such testing to be performed at respondent's expense with the results provided to the Office of Disciplinary Counsel; (3) respondent shall submit to an evaluation for drug and alcohol dependency at his expense and shall furnish the results thereof to the Office of Disciplinary Counsel; (4) respondent's practice of law shall be supervised for a period of eighteen months; (5) respondent is not precluded from employment with the Public Defender's Office to the extent of doing legal research, preparing pleadings and conducting client interviews, but cannot hold himself out to the



BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA

In Re: DON A. HUMBERSON, a member of
The West Virginia State Bar

I.D. No.: 98-02-142
Supreme Court No.: 25925

ORDER

Pursuant to correspondence of the 7th day of September, 2000, from the Office of Disciplinary Counsel tendering the interested parties Stipulations and Recommended Decision in the above-styled matter and upon consideration of the matters and all facts and issues appurtenant thereto, the hearing panel subcommittee in the above-styled matter, to-wit: Timothy L. Sweeney, Claudia West Bentley, and Glenn A. Walker hereby adopts the Stipulations and Recommended Decision proffered by the parties as same are more specifically set forth therein, a copy of which is attached hereto and incorporated herein by this reference for all purposes.

Enter this 20th day of September, 2000.

Timothy L. Sweeney, Chairman

Claudia West Bentley

Glenn A. Walker

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

**In Re: DON A. HUMBERSON, a member of
 The West Virginia State Bar**

**I.D. No.: 98-02-142
Supreme Court No.: 25925**

STIPULATIONS AND RECOMMENDED DECISION

This day comes the Respondent, Don A. Humberson, by counsel, Gerald G. Jacovetty, Jr., and the Office of Disciplinary Counsel, by Morgan Palmer Griffith, Lawyer Disciplinary Counsel, and submits to the Hearing Panel Subcommittee of the Lawyer Disciplinary Board the following stipulations and recommendations regarding the final disposition of the above-styled disciplinary matter. These stipulations and recommendations are made in an effort to resolve all matters at issue in this disciplinary case.

STIPULATIONS

1. Don A. Humberson (hereinafter "Respondent") is a licensed member of The West Virginia State Bar who practices in the Public Defender's Office in Weirton, Hancock 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 April 23, 1997.

2. Hancock County Magistrate Daniel Binkowski was arrested on January 10, 1998 and charged with driving under the influence of alcohol and marijuana. The police had scraped the carpeting of the car and had found a small amount of marijuana leaves. Respondent was in the car when Magistrate Binkowski was stopped, because they had spent the evening out together.

3. Following his arrest, Magistrate Binkowski was represented by attorney Dan McCune. Respondent had clerked for three summers in Mr. McCune's firm, and another partner in the firm was on the Public Defender Corporation's Board for the Weirton district.

4. Mr. McCune spoke by telephone with Respondent shortly after the arrest, on January 12 or 13, 1998. Respondent told Mr. McCune that the charges were trumped up; that there had been no marijuana present; and that the Magistrate had not been drunk.

5. Mr. McCune suggested that Respondent give him an affidavit, hoping that the special prosecutor, David Cross, might be persuaded to drop the case based upon Respondent's affidavit and the affidavit of the sheriff who drove Magistrate Binkowski home after the arrest.

6. Mr. McCune and Respondent met, and Mr. McCune drafted an affidavit which covered a number of points. The two attorneys reviewed a draft and made some changes.

7. Mr. McCune called Respondent and told him the affidavit was ready. Respondent signed the affidavit and swore to its truthfulness on February 20, 1998.

8. The affidavit stated in part:

That at all times during the evening prior to Mr. Binkowski's arrest, he did not smoke marijuana in my presence, he did not have marijuana on his person of which I was aware, and as far as I know he did not have any contraband or paraphernalia related to marijuana use. . . .

9. Mr. McCune did not file the affidavit in any proceeding, but mentioned to Mr. Cross that he had exculpatory affidavits. Mr. McCune sent a copy of the affidavit to his client.
10. Respondent's affidavit was false. Respondent had smoked marijuana with the Magistrate earlier that evening in the Magistrate's vehicle.
11. Respondent realized that he had made a grave error by executing the false affidavit, thus compromising his ethical standards. In an attempt to rectify the grave error, Respondent promptly contacted Attorney McCune and Special Prosecutor David B. Cross to advise them of the truth.
12. Respondent contacted Mr. McCune and Mr. Cross in March of 1998 to recant his affidavit. He gave the prosecutor a corrective, truthful sworn statement on March 17, 1998.
13. Respondent later admitted, in a deposition taken during the judicial disciplinary proceedings against the Magistrate, that he had used cocaine with Magistrate Binkowski twice in vehicles.
14. Respondent cooperated fully with Judicial Investigator, James Bryan and Special Prosecutor David B. Cross.
15. Respondent, prior to being ordered to do so, voluntarily sought a drug/alcohol assessment from Ronni Rittenhouse, Pd. D.

CONCLUSIONS OF LAW

1. Respondent was charged by the Investigative Panel of the Lawyer Disciplinary Board in the Statement of Charges with violations of West Virginia Rules of Professional Conduct 8.4(c) and 8.4(d) relating to his conduct, as set out more fully in the Statement of Charges.

2. Respondent has admitted, and stipulates that by swearing to a false affidavit, which was intended to be used in connection with a criminal prosecution, Respondent violated Rules 8.4(c) and 8.4(d) of the Rules of Professional Conduct, which provide:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;

RECOMMENDATIONS AS TO DISCIPLINE

1. The Office of Disciplinary Counsel and Respondent are agreed that there are not present in the record of this matter any items which should be viewed by the Hearing Panel Subcommittee as either aggravating circumstances or mitigating factors within the meaning of RLDP Rule 3.16(4).

2. The Office of Disciplinary Counsel and Respondent are agreed that an appropriate level of discipline for the violations charged and admitted to in this disciplinary matter are as follows:

1. Respondent shall be suspended from the privilege to practice law in the State of West Virginia for a period of ninety (90)

days. He shall be automatically reinstated to practice at the completion of the ninety (90) day period.

2. Respondent shall be subject to random drug testing for a period of eighteen (18) months, such testing to be performed at Respondent's own expense. Respondent and his attorney shall furnish the results of such testing upon their receipt thereof.

3. Respondent shall submit to an evaluation for drug and alcohol dependency at his own expense, and shall furnish the results thereof to the Office of Disciplinary Counsel.

4. Respondent shall be subject to a period of supervision for a duration of eighteen (18) months.

3. Respondent states to the Hearing Panel Subcommittee that he deeply regrets the events which led to him being charged in this matter, and offers apologies to the Lawyer Disciplinary Board.

4. Respondent agrees to pay the costs of these proceedings.

5. In light of the above stipulations, and in light of the remedial steps and other assurances given by the Respondent that the circumstances giving rise to the present disciplinary case will not occur in the future, and the fact that the records of the Office of Disciplinary Counsel reflect no prior ethical complaints being filed against the Respondent in West Virginia or any other jurisdiction, it is the joint recommendation of the Respondent and the Office of Disciplinary Counsel that above action be taken against the Respondent in this matter.

6. The parties urge that the Hearing Panel Subcommittee adopt this finding, and make an appropriate recommendation to the Supreme Court of Appeals of West Virginia to this end.

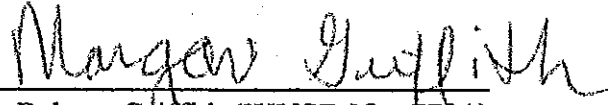
7. The stipulation is made in lieu of hearing on the Statement of Charges in the above-captioned matter providing the stipulation is accepted by the Hearing Panel Subcommittee. Both Disciplinary Counsel and Respondent recognize the Hearing Panel Subcommittee has the authority to reject these stipulations. In the event of such rejection, Respondent shall have the opportunity to a hearing *de novo*.

8. The foregoing stipulation constitutes the full stipulation entered into by the parties and if rejected by the Hearing Panel Subcommittee shall be of no force and effect. The parties acknowledge that the Supreme Court of Appeals of West Virginia is not obligated to accept either the stipulation of the parties or the recommendation of the parties or of the Hearing Panel Subcommittee, and may adjudicate the matter as seems proper to the Court, subject only to the Respondent's right to seek rehearing and argument thereon.

9. The parties agree to recommend that during the course of his suspension, Respondent will not be precluded from employment with the Public Defender's Office to the extent of doing legal research, preparing pleadings and conducting client interviews. Respondent understands that he cannot, in any manner, hold himself out to the public as an attorney; he cannot render legal advice nor appear before any Court.

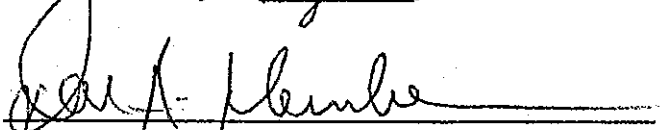
The agreement of the parties to the stipulation is evidenced by the signatures of
Counsel and Respondent affixed below.

Signed for the Office of Disciplinary Counsel, by Morgan Palmer Griffith,
on this, the 10 day of July, 2000.




Morgan Palmer Griffith (WVSB No. 7721)
Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
Huntington Bank Building, Suite 1710
900 Lee Street, East
Charleston, West Virginia 25301-1721
(304) 558-7999

Signed by Respondent, Don A. Humberson, on this,
the 20th day of August, 2000.



Don A. Humberson, Esquire (WVSB No. 7336)
Respondent
RD1, Box 283K
New Cumberland, West Virginia 26047

Signed by Counsel for Respondent, Gerald G. Jacovetty, Jr., on this,
the 1st day of August, 2000.



Gerald G. Jacovetty, Jr., Esquire (WVSB No. 5179)
Counsel for Respondent
82 ½ Fourteenth Street
Wheeling, West Virginia 26003
304-232-2800