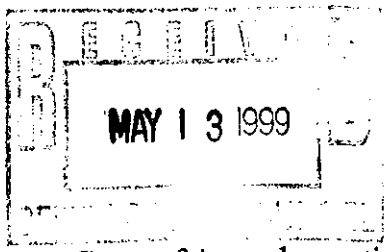


STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 6th day of May, 1999, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 25041

George Lemon, an active member of The
West Virginia State Bar, Respondent

On a former day, to-wit, March 9, 1999, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Nancy C. Hill, its chairperson, pursuant to Rule 3.10 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition recommending that respondent (1) be admonished; (2) be required to engage in community service consisting of handling five meaningful pro bono cases to completion, which cases may be assigned through legal services or may be for clients without the ability to pay who approach respondent directly, said cases to begin within one year of the final order of the Supreme Court of Appeals, and document compliance therewith to the Office of Disciplinary Counsel; (3) be prohibited from requesting or accepting any loans from current clients, regardless of whether or not the loan complies with Rule 1.8 of the Rules of Professional Conduct; however, this should not apply to loans from banks or financial institutions, even if the respondent does title or other legal work for said bank or financial institution; (4) be prohibited from engaging in any other type of business transaction with a current client (other than the prohibited loans), unless the client has obtained an independent opinion from other legal counsel, which does not excuse the respondent from compliance with any portion of the Rules of Professional Conduct,

including Rule 1.8. This restriction should not require the respondent to disband the business of which he is currently a partner, the BCL Partnership, nor does it require him to cease representing BCL in the future; (5) be prohibited from performing associated legal work whenever the respondent is acting as a broker or realtor; (6) be prohibited from performing any brokerage or real estate work for any current law firm clients; however respondent could continue doing brokerage or real estate work for the BCL Partnership but be prohibited from performing the associated legal work for any brokerage or real estate work he does for BCL Partnership; respondent be permitted to present a form Real Estate Purchase Agreement to buyers of BCL Partnership property but must advise all buyers in writing that he does not represent them, and that they must seek separate counsel to prepare the deed and perform any legal work, with respondent further prohibited from preparing a deed of trust if he acts as broker or realtor on BCL's behalf; (7) be required to separate his law firm bank accounts from those of his other businesses; (8) be required to comply with all of the provisions of formal opinion of the Lawyer Disciplinary Board, L.E.I. 76-1; (9) be required to petition the Supreme Court of Appeals for any relief from the aforelisted requirements; (10) be sanctioned for any violation of the aforelisted requirements as either contempt of court or as a separate professional ethics violation; and (10) be required to reimburse the Lawyer Disciplinary Board for costs and expenses incurred in the investigation of this matter in the amount of Two Thousand Two Hundred Fifty-Four Dollars and Eight Cents ($2,254.08).

Thereafter, on the 16th day of March, 1999, came the Office of Disciplinary Counsel, by Amie L. Johnson, Lawyer Disciplinary Counsel, pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its written consent thereto. Finally, on the 2nd day of April, 1999, came the respondent, George L.

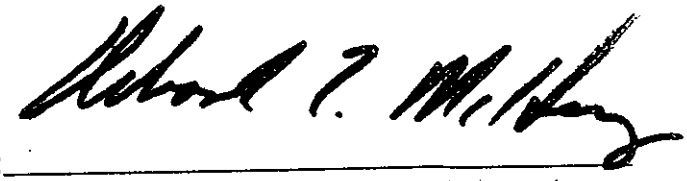
Lemon, pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court his written consent thereto.

Upon consideration whereof, the Court is of opinion to and doth adopt the written recommended disposition of the Hearing Panel Subcommittee of the Lawyer Disciplinary Board. It is therefore ordered that the respondent, George L. Lemon: (1) be, and he hereby is, admonished; (2) shall engage in community service consisting of the handling of five meaningful pro bono cases to their completion, which cases may be assigned through legal services or may be for clients without the ability to pay who approach respondent directly, said cases to begin within one year of this order, and respondent shall document compliance therewith to the Office of Disciplinary Counsel; (3) be, and he hereby is, prohibited from requesting or accepting any loans from current clients, regardless of whether or not the loan complies with Rule 1.8 of the Rules of Professional Conduct; however, this shall not apply to loans from banks or financial institutions, even if the respondent does title or other legal work for said bank or financial institution; (4) be, and he hereby is, prohibited from engaging in any other type of business transaction with a current client (other than the prohibited loans), unless the client has obtained an independent opinion from other legal counsel, which will not excuse the respondent from compliance with any portion of the Rules of Professional Conduct, including Rule 1.8. This restriction shall not require the respondent to disband the business of which he is currently a partner, the BCL Partnership, nor does it require him to cease representing BCL in the future; (5) be, and he hereby is, prohibited from performing associated legal work whenever the respondent is acting as a broker or realtor; (6) be, and he hereby is, prohibited from performing any brokerage or real estate work for any current law firm clients; however, respondent may

continue doing brokerage or real estate work for the BCL Partnership but is prohibited from performing the associated legal work for any brokerage or real estate work he does for BCL Partnership. Respondent is permitted to present a form Real Estate Purchase Agreement to buyers of BCL Partnership property but must advise all buyers in writing that he does not represent them, and that they must seek separate counsel to prepare the deed and perform any legal work, with respondent further prohibited from preparing a deed of trust if he acts as broker or realtor on BCL's behalf; (7) shall separate his law firm bank accounts from those of his other businesses; (8) shall comply with all of the provisions of formal opinion of the Lawyer Disciplinary Board, L.E.I. 76-1; (9) shall petition this Court for any relief from the aforelisted requirements; (10) shall be sanctioned for any violation of the aforelisted requirements as either contempt of court or as a separate professional ethics violation; and (10) shall reimburse the Lawyer Disciplinary Board for costs and expenses incurred in the investigation of this matter in the amount of Two Thousand Two Hundred Fifty-Four Dollars and Eight Cents ($2,254.08).

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

BEFORE A HEARING PANEL SUBCOMMITTEE OF THE LAWYER DISCIPLINARY BOARD STATE OF WEST VIRGINIA

IN RE: **GEORGE L. LEMON, a member of the West Virginia State Bar**

MAR - 9 1999

I.D. No. 96-01-158
Sup. Ct. No. 25041

HEARING PANEL SUBCOMMITTEE REPORT

A hearing was held on this disciplinary matter in Charleston, West Virginia, on October 23, 1998. Present and participating in the hearing were Nancy C. Hill, Subcommittee Chairperson; Subcommittee members Ann E. Snyder and Donna Donathan; Respondent, George L. Lemon, and his counsel, Christopher S. Smith; and Amie L. Johnson on behalf of the Office of Disciplinary Counsel ("ODC"). Testimony was taken from Respondent, Belinda Kirby and Sonya M. Kirby. The following Exhibits were offered and received on behalf of ODC and Respondent, and Joint Exhibits, including Joint Exhibit 1 entitled " Stipulations of Office of Disciplinary Counsel and Respondent, Including Recommended Sanction." The Hearing Panel Subcommittee, having reviewed the parties' stipulated facts, conclusions of law and recommended discipline, does find the Findings of Fact and Conclusions of Law to be acceptable and, adopts the same as follows:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent has been charged with entering into a business transaction with a client, Belinda V. Kirby, in violation of Rule 1.8(a) of the West Virginia Rules of Professional Conduct. The transaction at issue is a loan from Ms. Kirby to Respondent.

2. In 1992, Belinda V. Kirby was made a paraplegic in a car accident. With the assistance of attorney Larry L. Rowe, Ms. Kirby received a monetary settlement for her injuries.

3. If called to testify, Larry Rowe would explain that he had multiple conversations with Belinda Kirby about how to handle her money. One suggestion Mr. Rowe made, but which Ms. Kirby rejected, was to pay Ms. Kirby's mother for caring for Ms. Kirby. Mr. Rowe advised against simply leaving the money sitting in a bank. Mr. Rowe would testify that he referred Ms. Kirby to Respondent so that Ms. Kirby would have legal assistance in protecting her money. Respondent's office is closer to Ms. Kirby's home than is Rowe's office.

4. It was Respondent's understanding that Ms. Kirby was referred to him for a possible bankruptcy.

5. Belinda Kirby telephoned Respondent's office, and made an appointment for Respondent and his secretary, Leslie [Bennett] Bonds, to go to Ms. Kirby's home.

6. Mr. Rowe forwarded a check dated March 25, 1994, to Respondent in the amount of $60,601.13. This money was Ms. Kirby's proceeds from her settlement. On April 4, 1994, Respondent or a member of his staff deposited the $60,601.13 into Respondent's client trust account. Ms. Bonds sent Ms. Kirby a letter on April 4, 1994,

along with a copy of a deposit slip, a deposit receipt, a trust register showing the current balance in the account and one of Respondent's business cards with her name on the back.

7. Daniel Bloor, a lawyer with the Virginia Attorney General's Office, wrote to Larry Rowe on March 25, 1994, inquiring about payment for Ms. Kirby's unpaid medical expenses incurred at the University of Virginia Hospital. Mr. Rowe responded to this letter on April 20, 1994, telling Mr. Bloor that Belinda Kirby had suffered a tragic injury, that her medical bills greatly exceeded the amount of her modest insurance recovery and asking Mr. Bloor to close his file on the case. Mr. Bloor wrote to Mr. Rowe again on August 3, 1994, seeking collection on the hospital bill. Mr. Rowe forwarded Mr. Bloor's August 3, 1994 letter to Respondent on September 8, 1994. Mr. Rowe wrote a cover letter on September 8, 1994, asking Respondent to call and advise Rowe whether Rowe should respond to Bloor's letter, or whether Rowe should advise that he no longer represents Ms. Kirby.

8. To the knowledge of the parties herein, Ms. Kirby has not been sued for unpaid medical expenses, so it is presumed that Ms. Kirby's medical bills have either been taken care of through the efforts of Mr. Rowe or the respective creditors decided not to press them to judgment. Respondent would testify that he went to the Greenbrier County record room and found no recorded judgments against Ms. Kirby.

9. Respondent and Ms. Bonds met with Ms. Kirby at her mother's where Ms. Kirby was residing at the time. The date of this meeting is not certain, but it was in the same time period as when Mr. Rowe forwarded the $60,601.13 check.

10. At this meeting, Respondent obtained information for a possible bankruptcy petition. This information included that Ms. Kirby's source of income was $439.00 monthly in SSI benefits, that she had no more money coming from the settlement, that she owned no real estate or automobiles, and there was a discussion of some medical bills Ms. Kirby had. They discussed a bankruptcy § 341 meeting and personal exemptions allowed under law.

11. Respondent stated in his initial response to the ethics complaint that he asked for Ms. Kirby's social security number so that the funds could be put in a certificate of deposit or savings account in her name. Respondent stated that Ms. Kirby did not want to do that, because she said she did not want any of her family to know about the money because she was afraid they would take it. Respondent's assumption was that she was afraid her children would take this money from her.

12. Ms. Kirby testified at her deposition that she was not concerned about protecting the money from her children.

13. Respondent and Ms. Bonds testified at their depositions that Ms. Kirby did not want any bank statements coming to her house, because she did not want anyone to know about the money.

14. After this meeting, Respondent determined that it was not in Ms. Kirby's interests to file a bankruptcy, so he advised against filing.

15. At subsequent meetings with Ms. Kirby, Respondent suggested possible investments for her money, such as buying certificates of deposit and consulting with an investment counselor. Ms. Kirby rejected these ideas.

16. Ms. Kirby is an SSI recipient, and based upon her SSI eligibility, she receives Medicaid coverage. Respondent did not suggest that Ms. Kirby establish a social security approved trust or that she spend her money on social security approved items, as he was not aware of the law in this area.

17. None of the persons involved can remember how many meetings were held between Respondent, Ms. Bonds and Ms. Kirby, although at her deposition, Ms. Bonds estimated the number of meetings to be four or five.

18. Ms. Bonds would testify that she regularly goes with Respondent on meetings out of the office, and that to her knowledge she was with Respondent during all of his meetings with Ms. Kirby.

19. On three occasions before the loan at issue in this case, and on two occasions after the loan (discussed below), Ms. Kirby requested that Ms. Bonds send specific amounts of the money to Ms. Kirby. The three requests made before the loan were met from Ms. Kirby's money held in Respondent's client trust account. Specifically, on July 19, 1994, Ms. Kirby requested and received $3,000.00 for her son; on December 12, 1994, Ms. Kirby requested and received $600.00 for personal use; on May 9, 1995, Ms. Kirby requested and received $445.00 for personal use.

20. On June 7, 1995, Respondent and Ms. Bonds met with Ms. Kirby at the home where she was residing. Respondent suggested that Ms. Kirby loan the balance of her money, $56,556.00, to a business Respondent owns, the Great Valley Land Company. Respondent would repay the loan at 6% interest in 240 monthly payments of $405.00 each, for a total of $97,200.00. Respondent was to give Ms. Kirby a note reflecting these

terms, and as security for the loan, Respondent offered a deed of trust on a commercial lot located on Court Street in Lewisburg, West Virginia.

21. The next day, June 8, 1995, Respondent and Ms. Bonds returned to Ms. Kirby's residence. Respondent presented Ms. Kirby with a letter, signed by him, containing the terms of the loan. (This letter, dated June 7, 1995, is attached as Exhibit 1 and is herein incorporated by reference.)

22. Ms. Kirby testified at her deposition that the signature on the June 7, 1995 letter is hers, and that before she signs things, she reads them.

23. Ms. Kirby testified at her deposition that she has no recollection of the June 7, 1995 letter, or of signing the letter. Ms. Kirby testified that she did not understand that her money was tied up in a loan to Respondent's business, and that she did not understand that her money was tied up for 20 years.

24. Both Belinda Kirby and Sonya Kirby would testify that Belinda Kirby was taking pain and other medication during time periods relevant to these charges, and that this medication frequently caused Ms. Kirby to be disoriented. Ms. Kirby testified at her deposition that she was taking the same medications at the time of the deposition as she was taking in 1995. Sonya Kirby was not present during the meeting between her mother and Respondent, and doesn't have personal knowledge on whether or not her mother was disoriented at the meeting. There would also be testimony that Belinda Kirby is not financially sophisticated, and that she did not complete high school.

25. Ms. Bonds testified at her deposition that at the June 8, 1995 meeting, she verbally read the letter [Exhibit 1] to Ms. Kirby. Ms. Bonds testified that it was standard

procedure to read letters to clients because occasionally clients are illiterate and are too embarrassed to admit it.

26. Respondent and Ms. Bonds would testify that Respondent verbally advised Ms. Kirby of the opportunity to seek another lawyer to discuss the loan. The June 7, 1995 letter reads that "If you desire to seek advice from someone else before completing this transaction, please do so." The letter does not specify whether this "someone else" should be an attorney. Belinda Kirby testified at her deposition that she was not advised to consult a lawyer.

27. Both Respondent and Ms. Bonds testified at their depositions that they absolutely believed Ms. Kirby understood their discussions and understood what was happening with her money. Ms. Kirby testified at her deposition that she did not tell Respondent that she did not understand the transaction.

28. Respondent did not consult with any of Belinda Kirby's family members prior to the loan, but he understood that Belinda Kirby did not want these persons to know about the money.

29. Respondent's counsel elicited from Ms. Kirby at her deposition, essentially, that she wanted to do the transaction, but later after the transaction, she changed her mind. ODC points out that Ms. Kirby demonstrated confusion during her deposition[1]. Ms. Kirby also testified that she did not remember the June 7, 1995 letter at all, although she

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[1]Belinda Kirby, and her daughter Sonya M. Kirby, attended the October 23, 1998 hearing, and were provided an opportunity to comment on the parties' proposed stipulations of fact and recommended sanctions. (See tr. pp. 19 - 26.) Substantive testimony, however, was not elicited from either witness by counsel for ODC or Respondent.

identified her signature. ODC also points out that Ms. Kirby testified that she did not understand that her money was being tied up for a long period of time.

30. Respondent testified that he offered the loan idea because Ms. Kirby had rejected his previous investment suggestions, and that he wanted to help Ms. Kirby. He would testify that he believed Ms. Kirby needed a monthly income, and that this would be a way to provide her with an income. Ms. Kirby testified at her deposition that she understood that Respondent and Ms. [Bennett] Bonds were trying to help her with her money, although it is not clear whether Ms. Kirby meant with respect to the loan or with respect to handling her money in general.

31. Respondent did not advise Ms. Kirby of Great Valley Land Company's financial situation, including whether or not the business had any assets or debts.

32. Respondent signed a Deed of Trust dated June 30, 1995, which gives Ms. Kirby a security interest in a particular piece of property in Lewisburg. (This Deed of Trust is attached as Exhibit 2 and is herein incorporated by reference.)

33. In 1997, the value of the property which was placed as a security interest was estimated to be approximately $85,000.00, which exceeds the amount of the loan.

34. The Deed of Trust was not recorded until January 31, 1996. Respondent would assert that the delay in recording was an oversight, and that he did not discover that the document had not been recorded until he saw the document in his file when Sonya Kirby came to his office on January 31, 1996, inquiring about her mother's money.

35. Disciplinary Counsel asserts that Respondent did not provide Ms. Kirby with a negotiable promissory note, despite references to a note in the June 7, 1995 letter and to a negotiable promissory note in the June 30, 1995 Deed of Trust. Respondent asserts

that when confronted with this allegation very recently, Respondent has recalled that there was a note, and he has found a note on his computer. Respondent does not have a copy of a signed note, and no copy of the note -- either signed or unsigned -- was in either his file or Ms. Kirby's papers.

36. There is no documentation to prove that Respondent ever provided Ms. Kirby with a copy of the Deed of Trust. Respondent would testify that he believes his office sent a copy of the Deed of Trust to Ms. Kirby, and that it was his intention to do so. It is anticipated that Ms. Kirby would testify that she does not recall ever receiving a copy of the Deed of Trust. Disciplinary Counsel would assert that Ms. Kirby did not receive a copy of the Deed of Trust until Respondent provided a copy of the same to Ms. Kirby's adult daughter, Sonya Kirby, on January 31, 1996, which is the same day that this Deed of Trust was recorded.

37. On June 13, 1995, Respondent transferred $56,556.00, representing the loan amount, from his client trust account to his law firm business account.

38. Respondent's law firm business account is the same account in which he deposits Great Valley Land Company's money, and is the same account in which he deposits money involving other businesses he owns.

39. The Great Valley Land Company is a business wholly-owned by Respondent, and is operated out of Respondent's law office.

40. The $450.00 loan payment was due on the last day of each month. The payments were made from Respondent's law firm business account. Records kept by Ms. Bonds reflect that the payments were made as follows:

DATE DUE	DATE PAID
July 31, 1995	July 17, 1995
August 31, 1995	July 28, 1995
September 31, 1995	October 20, 1995
October 31, 1995	November 16, 1995
November 31, 1995	December 8, 1995
December 31, 1995	December 8, 1995
January 31, 1996	January 25, 1996
February 29, 1996	March 15, 1996
March 31, 1996	April 11, 1996
April 31, 1996	May 3, 1996
May 31, 1996	June 4, 1996
June 31, 1996	June 7, 1996

41. The June 7, 1995 letter which Respondent provided Ms. Kirby [Exhibit 1] states that the monthly loan payments would be deposited into a savings account in Ms. Kirby's name at One Valley Bank in Fairlea, West Virginia. A savings account was opened on July 17, 1995, at the Bank of White Sulphur Springs, and remained open for approximately ten (10) days. In this 10-day time period, Ms. Kirby made a request for money, and it was determined that a savings account would not be appropriate because of the difficulty in withdrawing money from a savings account when Ms. Kirby requested funds (i.e., that money would have to be withdrawn from the savings account and then deposited into another account from which a check would be issued to Ms. Kirby). The savings account was closed on July 28, 1995, and a checking account was opened that same day at the Greenbrier Valley Bank.

42. Both the checking and savings accounts were opened in the name of George L. Lemon, Trustee, using Mr. Lemon's social security number. Ms. Kirby's name does not appear on the bank documents. Statements were sent directly to Respondent, who did not

provide copies of the same for Ms. Kirby. Respondent and his secretary controlled the savings passbook, and later the checking account checkbook.

43. Respondent testified at his deposition that Ms. Kirby did not want her name on the bank accounts, and did not want the bank statements sent to her.

44. After the loan money was transferred, Ms. Kirby called and wanted $800.00. Ms. Bonds withdrew $800.00 from the checking account and mailed it to Ms. Kirby on July 28, 1995. Ms. Kirby also requested an additional $700.00, which was sent to her on December 8, 1995.

45. At some point during the end of 1995 or January, 1996, Ms. Kirby's living arrangements were ending, and she needed to locate a place to live. Ms. Kirby discussed with Respondent her idea of purchasing a $28,000.00 home in Ronceverte, West Virginia. Respondent advised her not to purchase the home, as she wouldn't have sufficient money to maintain it. Respondent asserts that this discussion occurred at Ms. Kirby's house after January 31, 1996, while ODC asserts that this discussion occurred at Ms. Kirby's house before January 31, 1996. January 31, 1996, is the date Sonya Kirby went to Respondent's office and obtained copies of documents pertaining to the loan.

46. On a date after this contact with Respondent about buying the house, Ms. Kirby telephoned Respondent's office four (4) times in one day. Ms. Bonds answered the calls. Each time Ms. Kirby called, Ms. Kirby asked the same basic question, "how much money do I have left?" Ms. Bonds recited the amount which was in the checking account, which at that time was approximately several hundred dollars. Ms. Kirby thanked Ms. Bonds each time, and they hung up. After the fourth call, Ms. Bonds informed Respondent that she thought something was wrong.

47. On the same day that Ms. Belinda Kirby spoke with Ms. Bonds four times, Sonya Kirby also telephoned Respondent's office. It is not clear whether Sonya Kirby spoke with Respondent when she made this call, but Respondent would testify that at that time, he would not have provided Sonya Kirby with any information because he did not have Belinda Kirby's consent to do so.

48. Sonya Kirby would testify that she called Respondent's office several times, but that Respondent did not return the calls. Sonya Kirby then visited Respondent's law office on two occasions without an appointment. Respondent would testify that these visits occurred on January 25, 1996, and January 31, 1996.

49. Respondent would testify that he did not speak with Sonya Kirby on her first visit, because of confidentiality issues and because of Belinda Kirby's earlier statement about not letting her family have the money -- Respondent was concerned that Belinda Kirby's family was attempting to get the money for themselves. Respondent would testify that he telephoned Belinda Kirby and obtained permission to speak with Sonya Kirby. On the second visit, January 31, 1996, Respondent explained the loan to Sonya Kirby, and provided Sonya Kirby with a copy of the Deed of Trust, and an Amortization Summary and Amortization Schedule concerning the loan.

50. Sonya Kirby would testify that when she visited Respondent's office, he promised to return her mother's money, but that he needed thirty (30) days to get the money together. Respondent would refute that he promised to do this, or that he should do this, because Sonya Kirby was not his client.

51. On March 20, 1996, Belinda Kirby telephoned Larry Rowe requesting assistance in obtaining her money from Respondent. On March 27, 1996, Mr. Rowe wrote

Respondent a letter, inquiring about Ms. Kirby's bank account balance, and indicating that he was writing because of Ms. Kirby's call to him and because Ms. Kirby wanted to purchase property and wanted the full balance of her money. Respondent responded to this letter on about August 1, 1996, when he wrote on the letter and sent it back to Rowe inquiring as to whom he should give the money.

52. Sonya Kirby would testify that when her mother did not receive the money within the 30 days, Sonya Kirby assisted her mother in filing an ethics complaint. Sonya Kirby will testify that she wrote out the ethics complaint with her mother's approval. The ethics complaint was received on April 30, 1996. Respondent wants it known that Belinda Kirby did not write out or sign the ethics complaint.

53. Ms. Kirby testified at her deposition that prior to the ethics complaint, she did not ask anybody for the remaining amount of her money. However, at her deposition, Ms. Kirby did not recall that she had telephoned Larry Rowe asking for assistance in obtaining the money. Sonya Kirby would testify that she asked Respondent for the money on her mother's behalf, prior to the filing of the ethics complaint.

54. ODC forwarded the ethics complaint to Respondent on May 29, 1996. After he received the complaint, Respondent telephoned former Disciplinary Counsel Janice Binder and offered to send the money to Ms. Kirby or to ODC. Respondent explained that he was concerned about protecting the money from Ms. Kirby's family, and that he believed that the people Ms. Kirby did not want to receive her money were responsible for the filing of the ethics complaint. Ms. Binder instructed Respondent to wait on sending Ms. Kirby any money. Ms. Binder arranged for attorney William Turner to assist Ms. Kirby, and also made inquiries to various lawyers about SSI requirements.

55. Respondent telephoned Ms. Binder's office on multiple occasions after the ethics complaint was filed, inquiring about returning the money. Ms. Binder did not return Respondent's calls. Ms. Binder did attempt to contact Mr. Turner. During this time period, Ms. Binder resigned her employment from ODC.

56. In early July, 1996, Respondent and Mr. Turner discussed Mr. Turner's representation of Belinda Kirby. Mr. Turner reported that Ms. Kirby had not yet decided on the purchase of a house.

57. On August 9, 1996, Respondent wrote to Mr. Turner, stating that Ms. Kirby's investment had been cashed in and that it was ready to be transferred as she desired. Respondent stated that the money was no longer earning income, and should be invested so that Ms. Kirby would have a monthly income.

58. Respondent testified at his deposition that he was frustrated at the lack of direction from Ms. Kirby and Mr. Turner, and by not hearing anything from the ODC as to what to do with Ms. Kirby's money. On October 1, 1996, Respondent provided Ms. Kirby with a cashier's check in the amount of $58,396.85, which included the amount to pay off the loan and to pay Ms. Kirby the amount of money which was held in the checking account. Respondent obtained a signed Release of Deed of Trust from Ms. Kirby on October 1, 1996.

59. After a delay, Belinda Kirby did purchase a house. Respondent believes that Ms. Kirby overpaid for this home. Ms. Kirby presently has little or no money left from the settlement.

60. Respondent later learned that Sonya Kirby purchased property in the Spring of 1996, and would assert that Sonya Kirby really wanted her mother's money to buy this property. It is anticipated that Sonya Kirby and Belinda Kirby would refute this.

II. ARGUMENT PRESENTED BY PARTIES

1. Disciplinary Counsel's Argument

Respondent violated Rule 1.8(a), which provides:

Rule 1.8. Conflict of Interest: Prohibited transactions.

> (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
>
> (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
>
> (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
>
> (3) the client consents in writing thereto.

The transaction and terms of the loan were not fair and reasonable to Ms. Kirby for several reasons. No steps were taken (and no advice was given) to protect Ms. Kirby's SSI and medical coverage. No SSI trust was set up, and no advice was given on spending the money on approved SSI purchases. Simply having a security interest in a piece of property valued at approximately $85,000.00 would adversely impact Ms. Kirby's benefits. Furthermore, Respondent did not provide Ms. Kirby with a negotiable promissory note, despite the references to this in his letter and the Deed of Trust. The bank accounts were not in Ms. Kirby's name and were not opened in the bank which she had been told would

be used. Respondent did not protect Ms. Kirby's interests when he failed to record the Deed of Trust for seven months. Disciplinary Counsel would assert that Respondent did not provide Ms. Kirby with a copy of the Deed of Trust, and that she was not even given the street address of the property which was put up as security.

Furthermore, Respondent did not provide information on the financial status of Great Valley Land Company, or on Respondent's own financial situation, thus Ms. Kirby wasn't provided enough information to know whether the loan was a wise investment. By saying that the loan was to the Great Valley Land Company, even though this company is one and the same with Respondent, Respondent made it sound like the investment was better than it possibly was. Also, several of the monthly payments were made late.

Ms. Kirby is unsophisticated in the ways of business. Very importantly, Ms. Kirby was and is medicated, and throughout this disciplinary proceeding has exhibited disorientation and confusion. She freely admits that the signature on the June 7, 1995 letter is hers, but she has no recollection of ever seeing or signing the letter. Ms. Kirby thought she could call and request various sums of money, just as she had done five (5) times before she desired to buy the house.

Ms. Kirby testified at her deposition that Respondent did not advise her to seek the advice of separate counsel. Sonya Kirby would testify that Respondent did not return her mother's money, despite his promise to do so.

Ms. Kirby was not given reasonable opportunity to seek the advice of separate counsel in the transaction. She is a paraplegic in a wheelchair, and depends upon others for transportation and other needs. Respondent only gave Ms. Kirby one day's time, which would not be sufficient for someone in her situation.

ODC disputes that former Disciplinary Counsel Janice Binder told Respondent not to return the money, rather she only advised that he wait -- and in the meantime, she obtained other counsel for Ms. Kirby and investigated SSI requirements. Shortly thereafter, Ms. Binder resigned her employment with ODC.

ODC further asserts that Ms. Kirby was extremely confused during her deposition, and that any admissions Respondent believes he has acquired are suspect. Ms. Kirby did not remember the June 7, 1995 letter, did not remember calling Larry Rowe seeking assistance in obtaining her money, and did not even know who Larry Rowe was at the beginning of her deposition.

Ms. Kirby did request her money from Respondent -- she wanted $28,000.00 of her money to buy a house, because her present living arrangements were ending. Respondent talked her out of this purchase.

2. Respondent's Argument

Both Respondent and his secretary, Leslie [Bennett] Bonds, believed that Ms. Kirby understood everything that was discussed and understood what was happening with her money. Ms. Kirby read the letter and signed it. Ms. Bonds read the letter to Ms. Kirby as was standard procedure. Ms. Kirby understood that Mr. Lemon and Ms. Bonds were trying to help her with her money. Ms. Kirby testified that Mr. Lemon and Ms. Bonds explained the transaction, and that she wanted to do the transaction, but after she did the transaction, she later changed her mind. Ms. Kirby testified that she never told Mr. Lemon that she did not understand the contents of the letter detailing the transaction. Further, Ms. Kirby admits, as was confirmed by the deposition testimony of Mr. Lemon and Ms. Bonds, that Ms. Kirby never asked Mr. Lemon to pay off the note early and give her the money prior

to the filing of the ethics complaint. Mr. Lemon testified that anytime Ms. Kirby asked for money, she received it.

Respondent was not aware of the requirements of SSI law, and thus his failure to advise on this was, at worst, a matter of negligence but does not constitute an ethics violation. The interest rate on the loan was fair, and the value of the security interest more than covered the value of the loan. Several of the monthly payments were made early. The delay in recording the Deed of Trust was an oversight.

Respondent asserts that Ms. Kirby received all of her money and suffered no damage or liability as a result of the transaction. In this case, Respondent would argue that former Disciplinary Counsel shared Respondent's concern about Ms. Kirby's children receiving the money. It was after Mr. Lemon became frustrated at the lack of direction from Ms. Kirby, Mr. Rowe and Mr. Turner, and did not hear anything from the ODC, that he went to see Ms. Kirby on October 1, 1996, and paid her the remaining amount owed her and obtained a release of the Deed of Trust. Respondent asserts that the ethics complaint was an attempt by Sonya Kirby to obtain some or all of her mother's money, and that this is exactly what Belinda Kirby had not wanted to happen. Ms. Kirby rejected his prior advice on handling her funds, and that he was simply trying to help her receive a monthly income. Ms. Kirby presently has little or none of the money left. Respondent did not want Ms. Kirby to spend her money on an unwise investment, such as a home she could not afford to maintain. Respondent believes that Ms. Kirby's present home is not worth what she spent on it.

III. STIPULATIONS OF LAW

For purposes of resolving this matter, the Respondent and ODC have stipulated as follows:

1. The Lawyer Disciplinary Board and Supreme Court of Appeals have jurisdiction over this case.

2. Respondent failed to protect Belinda Kirby's interests by not timely recording the Deed of Trust; Respondent did not keep proper documentation of the loan (including not having a copy of the note in his file); Respondent should have allowed more time for Ms. Kirby to consider the loan; and Respondent made an error in judgment when he sought and accepted this loan, which has the appearance of impropriety. For the reasons specified in this paragraph, Respondent violated Rule 1.8(a) of the Rules of Professional Conduct, as set forth above.

IV. SANCTIONS

1. The Hearing Panel Subcommittee rejects the parties' stipulated recommended sanctions.

2. The Hearing Panel Subcommittee recommends the following sanctions:

a. Admonishment, pursuant to Rule 3.15(6), Rules of Lawyer Disciplinary Procedure.

b. Community service, pursuant to Rule 3.15(5), Rules of Lawyer Disciplinary Procedure, as follows: the Supreme Court should direct the Respondent to engage in community service by handling to completion five

(5) meaningful pro bono cases. These cases may be assigned through legal services or may be for clients who have approached Respondent directly and who do not have the ability to pay. Respondent shall choose the cases to satisfy this requirement. Respondent's representations of these five (5) pro bono clients shall begin within one (1) year of the final order of the Supreme Court of Appeals in this case, and the representations shall be diligently pursued to conclusion. Respondent shall make a report to Disciplinary Counsel, documenting his compliance, when he has completed this requirement.

c. Limitations on the nature of Respondent's future practice, pursuant to Rule 3.15(3), Rules of Lawyer Disciplinary Procedure, as follows:

(1) The Supreme Court should order the Respondent that in the future he shall not request or accept any loans from current clients, regardless of whether or not the loan complies with Rule of Professional Conduct 1.8. This restriction should not apply to loans from banks or financial institutions, even if Respondent does title or other legal work for the bank or financial institution.

(2) The Supreme Court should order that whenever the Respondent desires to engage in any other type of business transaction with a current client (other than the prohibited loans), the Respondent may not proceed with the transaction unless the client has obtained an independent

opinion from other legal counsel. This provision does not excuse the Respondent from compliance with any portion of the Rules of Professional Conduct, including Rule 1.8. This restriction does not require Respondent to disband the business of which he is currently a partner, the BCL Partnership, nor does it require him to cease representing BCL in the future.

(3) The Supreme Court should order that whenever Respondent is acting as a broker or realtor, then he shall not perform the associated legal work (such as preparing the deed of trust or other legal documents).

(4) The Supreme Court should order that Respondent not perform any brokerage or real estate work for any current law firm client. This restriction would not prevent Respondent from doing brokerage or real estate work for the BCL Partnership. However, consistent with subparagraph (3) above, the Respondent shall not perform the associated legal work for any brokerage or real estate work he does for BCL Partnership. Respondent may present a form Real Estate Purchase Agreement to buyers of BCL Partnership property (as any broker or realtor could do), but he must advise all buyers in writing that he does not represent them, and that they must seek separate counsel to prepare the deed and

perform any legal work. Respondent may not prepare the deed of trust if he acts as broker or realtor on BCL's behalf.

(5) The Supreme Court should order the Respondent to separate his law firm bank accounts from those of his other businesses.

(6) The Supreme Court should order the Respondent to comply with all of the provisions of formal opinion of the Committee on Legal Ethics (now named the Lawyer Disciplinary Board) L.E.I. 76-1 (attached as Exhibit 3 and herein incorporated by reference).

d. The Supreme Court shall order the Respondent to reimburse the Lawyer Disciplinary Board for the costs of the disciplinary proceeding, in accordance with Rule 3.15, Rules of Lawyer Disciplinary Procedure.

e. Any order by the Supreme Court shall be in the nature of a permanent injunction, and the Respondent must file a petition to the Court if in the future he seeks relief from the requirements. The petition for relief shall be served upon ODC, which shall have the opportunity to respond.

f. Violating the terms of the Supreme Court order would be sanctionable as either contempt of Court or as a separate professional ethics violation.

Nancy C. Hill, Esquire
Chairperson of the
Hearing Panel Subcommittee

Date: 3/8/99

Ann E. Snyder, Esquire

Date: 3-3-99

Donna Donathan

Date: Feb. 19, 1999