

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. 27050

William H. Martin, a member of The West Virginia State Bar, Respondent

On a former day, to-wit, September 19, 2000, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Joyce H. Morton, 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, William H. Martin, agree to the following stipulations for violating Rule 3.1 of the Rules of Professional Conduct: (1) respondent be admonished; and (2) respondent reimburse the Lawyer Disciplinary Board for the expenses incurred in the investigation of this matter, said costs not to exceed Three Thousand Dollars (\$3,000.00), with reimbursement to be completed within one year from the date of the Supreme Court order adopting the agreement, with interest accruing at ten percent per annum.

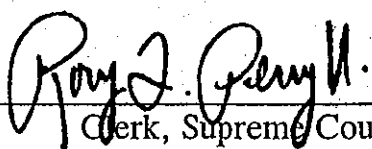
Upon consideration whereof, the Court is of opinion to and doth hereby adopt the aforesaid agreement. It is hereby ordered that the respondent, William H. Martin, be, and he hereby is, admonished. It is further ordered that respondent shall reimburse the Lawyer Disciplinary Board for the costs incurred in the investigation of this matter, said costs not to exceed Three Thousand Dollars (\$3,000.00), with reimbursement

to be completed within one year from the date of this order, with interest accruing at ten percent per annum. Justice Scott did not participate in this matter.

Service of an attested copy of this order shall constitute sufficient notice of the contents herein.

A True Copy

Attest:


Clerk, Supreme Court of Appeals

FILE COPY

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

WILLIAM H. MARTIN, a member of
The West Virginia State Bar

FILED

SEP 19 2000

ROBY L. FREEMAN II, CLERK
SUPREME COURT OF APPEALS
I.D. No. 97-01-460
Supreme Court No. W/27050 VIRGINIA

AGREED RECOMMENDATIONS OF THE HEARING PANEL SUBCOMMITTEE

On July 17, 2000, the above-styled matter was brought on for a hearing in Charles Town, West Virginia. Presiding were Hearing Panel Subcommittee Chair Joyce H. Morton, Esquire, and Hearing Panel Subcommittee members William B. Richardson, Jr., Esquire, and Ms. Elizabeth Bellotte. Respondent William H. Martin appeared in person *pro se*, and the Office of Disciplinary Counsel was present by Amie L. Johnson.

After some discussion with the Subcommittee and on their own, the Respondent and Disciplinary Counsel were able to agree to recommended findings and a recommended outcome for this case. The Office of Disciplinary Counsel noted that Respondent is closing his law practice to move into new endeavors and that there was an interest in bringing this case to a conclusion. This recommendation was read into the record and was verbally adopted by the Hearing Panel Subcommittee. Accordingly, based upon the agreement of the parties, the Hearing Panel makes the following findings of fact and conclusions of law and recommendation on sanction and costs.

FINDINGS OF FACT

This lawyer disciplinary case concerns Respondent's behavior after his clients, the defendants, were unsuccessful at trial in the case *Brooke Richardson, et al. v. Hilltop Hotel Club, Inc., et al.*, Circ. Ct. Jefferson County Civ. No. 94-C-125.

GRANT/REFUSE ACCEPT Date: 7-19-00
Recused/Not Participating SCB
Chief Justice

After the trial, Respondent engaged in overzealous behavior. Respondent admits he went too far. In his overzealousness, Respondent filed multiple lawsuits not supported by law and arguably not supported by fact. Mr. Martin was wrong to have alleged opposing counsel colluded in convicting false testimony without proof thereof.

The Office of Disciplinary Counsel asserts that Mr. Martin was wrong to have subpoenaed, post-trial and without notice to opposing counsel, records from a school regarding Plaintiff Richardson's minor aged son, and that the information in those records was not relevant and not likely to lead to relevant information. Respondent disagrees with this assertion regarding the subpoena. Instead, Respondent asserts there was nothing illegal in obtaining the subpoena and that he was merely following the directions of the school principal and Board of Education in doing so.

The Hearing Panel makes no finding that Respondent lied or was dishonest.

CONCLUSIONS OF LAW

Respondent violated Rule 3.1 of the Rules of Professional Conduct, which provides:

Meritorious claims and contentions.

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

The Hearing Panel and Disciplinary Counsel recommend to the Court that all other alleged rule violations be dismissed.

RECOMMENDED SANCTION AND COSTS

Respondent should receive an admonishment from the West Virginia Supreme Court of Appeals.

Pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, because a sanction would be imposed Respondent is also required to reimburse the Lawyer Disciplinary Board for the costs of this disciplinary proceeding, although those costs are to be capped at a maximum of \$3,000. Respondent shall have one year from the date of any Supreme Court order adopting these recommendations to pay the costs. Interest shall accrue on these costs at ten percent per annum.

EVIDENTIARY RECORD

In order to satisfy the record requirement of *Lawyer Disciplinary Board v. Kupec (Kupec I)*, 202 W. Va. 556, 505 S.E.2d 619 (1998), in addition to this document the following will be submitted to the Supreme Court:

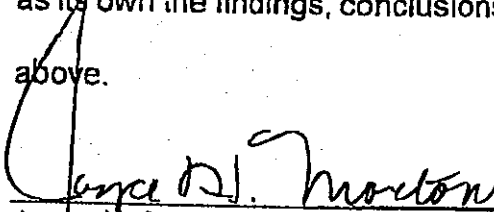
1. The transcript of the July 17, 2000 hearing;
2. ODC exhibits 1 through 48 [Exhibit 18, attachment D to Exhibit 25, and Exhibit 48 are to be submitted under seal]¹;
3. The pleadings already on file with the Supreme Court, including the Statement of Charges, Answer, and the Summary of the Facts of the Case and the Applicable Law submitted by both Disciplinary Counsel and Respondent;

¹Respondent was given the opportunity to supplement this record with exhibits which were not already offered by the Office of Disciplinary Counsel but which were provided in discovery, but he has advised that he has nothing additional.

4. The transcript of the deposition of Wilson Dillon taken May 31, 2000;
5. The transcript of the deposition of Virginia Angle taken May 31, 2000; and
6. The transcript of the deposition of Brooke Richardson taken June 23, 2000.

RECOMMENDATION TO THE SUPREME COURT

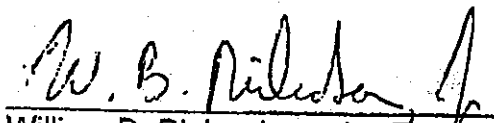
Pursuant to *Kupec I*, the Supreme Court of Appeals has the ultimate authority to determine the outcome of a lawyer disciplinary case. The Hearing Panel Subcommittee of the Lawyer Disciplinary Board recommends that the Supreme Court of Appeals adopt as its own the findings, conclusions, and recommendation on sanction and costs set forth above.



 Joyce H. Morton, Esquire
 Subcommittee Chair

7-01-00

 Date



 William B. Richardson, Jr., Esquire
 Subcommittee Member

9/6/00

 Date




 Ms. Elizabeth Bellotte
 Subcommittee Member

9-5-2K

 Date

Prepared by:



 Amie L. Johnson [Bar ID 6623]
 Interim Chief Lawyer Disciplinary Counsel
 Office of Disciplinary Counsel
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 Charleston, WV 25301
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Approved by:



William H. Martin, Esquire [Bar ID 2346]

Respondent

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