

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 2nd day of December, 1999, the following order was made and entered:

Lawyer Disciplinary Board,
Complainant

vs.) No. 25320

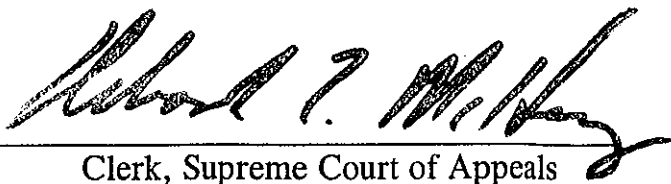
Randal A. Minor, a member of The
West Virginia State Bar,
Respondent

On a former day, to-wit, September 27, 1999, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Claudia W. Bentley, its chairperson, pursuant to Rule 3.10 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition in the above-captioned proceeding recommending that the charges filed against the respondent, Randal A. Minor, a member of The West Virginia State Bar, be dismissed.

There having been heard neither consent nor objection from either the Office of Disciplinary Counsel or the respondent, pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary Procedure, the Court is of opinion to and doth hereby adopt the written recommended disposition of the Hearing Panel Subcommittee of the Lawyer Disciplinary Board. It is therefore ordered that the charges filed against the respondent be, and they hereby are, dismissed.

A True Copy

Attest:


Clerk, Supreme Court of Appeals

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

In RE: RANDAL A. MINOR, an active member of
The West Virginia State Bar

I.D. No.: 97-03-440
Supreme Court No.: 25320

STIPULATIONS AND RECOMMENDED DECISION

This day comes the Respondent, Randal A. Minor, by counsel, Charles R. DiSalvo, and the Office of Disciplinary Counsel, by Steven Johnston Knopp, 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, and in recognition that there exists no dispute between the parties regarding the ethical prohibition against the preparation of pleadings of both parties in a divorce or other civil action, and the recognition that the prohibition encompasses the provision of even a blank pro se answer form to a defendant in a divorce action.

STIPULATIONS

1. Randal A. Minor (hereinafter "Respondent") is a licensed member of The West Virginia State Bar who practices in Morgantown, Monongalia 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 May 19, 1981.

2. Respondent is an adjunct professor in the Clinical Law Program at the West Virginia University College of Law, and is charged with violating Rule 1.7 of the West Virginia Rules of Professional Conduct related to the preparation of pleadings for both parties in a divorce action. A complaint in that regard was filed by the Complainant, Terence C. Burton, on November 3, 1997, alleging that he had been served by a law student with a divorce complaint and summons, to which was attached a pro se answer form. After investigation, on May 13, 1998, the Investigative Panel of the Lawyer Disciplinary Board issued a closing Order, which admonished Respondent. Respondent timely filed an objection to the decision of the Investigative Panel, and formal charges were filed against Respondent with the Supreme Court of Appeals of West Virginia on July 17, 1998. Respondent timely filed his answer to the formal charges with the Supreme Court of Appeals and the matter was referred to a Hearing Panel Subcommittee of the Lawyer Disciplinary Board. A final hearing before the Hearing Panel Subcommittee is scheduled for November 9, 1998. 3

Respondent has been employed as an adjunct professor with the Clinical Law Program of the West Virginia University College of Law each academic year since the Fall Semester of 1994-1995 school year. Respondent's duties, as an adjunct professor with the Clinical Law Program, involve the supervision of third year law students in their clinical duties pursuant to Rule 10.0 through 10.4 of the West Virginia Rules for Admission to the Practice of Law. During the 1997-1998 school year, Respondent supervised a team of two student attorneys, Paul Loftus and Raymond Blake.

4. The disciplinary complaint against Respondent arose from the case of Burton v. Burton, Civil Action No. 97-D-405, a divorce action filed in Marion County Circuit Court on

September 22, 1997. In that case, the Clinical Law Program, through Respondent and the student attorneys Loftus and Blake, represented the plaintiff Sheryl Burton. The defendant, Terence Burton, was represented by Pamela Folickman, Esquire. The disciplinary complaint filed against Respondent by Terence Burton stated that a pro se answer form was attached to the complaint and summons served upon him in the divorce action.

5. The pro se answer form referred to in the disciplinary complaint was the form answer commonly maintained by Circuit Clerks and made available to *pro se* defendants pursuant to West Virginia Code §48-2-4a. The pro se answer form in question had the style of the Burton divorce case hand-written at the top of the form, but was otherwise uncompleted. While there would appear to be little if any reason to dispute Terence Burton's statement that he received the blank pro se answer form attached to the complaint and summons as indicated in his disciplinary complaint, neither Respondent nor the Office of Disciplinary Counsel have been able to clearly ascertain who wrote the style of the case at the top of the form or who attached the form to the complaint and summons ultimately served upon Terence Burton.

6. The complaint in the Burton divorce case was prepared by student attorneys Loftus and Blake under the supervision of Respondent. Prior to the complaint being filed with the Marion County Circuit Clerk, the complaint was reviewed and signed by Respondent consistent with Rule 10.3(a)(1) of the West Virginia Rules for Admission to the Practice of Law. Respondent stated at the time he reviewed the complaint and the other documents to be filed in the divorce case the complaint did not have a blank pro se answer form attached, nor did he otherwise see such a form with any of the other documents reviewed by him.

7. Respondent sent the students to the Office of the Marion County Circuit Clerk to file the pleadings in the Burton divorce. In his affidavit filed with the Office of Disciplinary Counsel, student attorney Loftus indicated that when the students filed the pleadings in the Burton divorce case, they were asked by an assistant Circuit Clerk to complete a couple of other forms, one of which may have been the pro se answer form at issue in the disciplinary case. Student attorney Loftus also indicated in his affidavit that the hand-written style of the case at the top of the pro se answer form appeared to be his handwriting. Student attorney Loftus also indicated that the forms completed by the students were given back to the assistant Circuit Clerk and the students had no knowledge of what was done with the forms afterward. There is no evidence that students Loftus and Blake discussed the above events with Respondent at any time prior to the filing of the disciplinary complaint, or that Respondent had any other reason to know, prior to the filing of the disciplinary complaint, that Mr. Loftus may have written the style in the Burton case at the top of the pro se answer form and returned the same to the assistant clerk.

8. At the time that the pleadings were filed in the Burton divorce case, it was contemplated that service would be made upon Terence Burton by the Marion County Sheriff's Office. When the Sheriff's Office was unable to accomplish service upon Terence Burton, student attorneys Loftus and Blake retrieved the service copy of the complaint and summons from the Sheriff's Office. Later, the student attorneys arranged for service to be made upon Terence Burton at his place of employment by another third year law student not associated with the Clinical Law Program. Respondent was aware of the student attorneys' efforts to accomplish service upon Mr. Burton, but there is no evidence that Respondent reviewed the service copy prior to service being accomplished upon Terence Burton. It was the service copy of the summons and complaint

eventually served upon Terence Burton to which the pro se answer form apparently was attached. There is no evidence that either the student attorneys or Respondent realized that the pro se answer form was attached to the complaint and summons prior to the service of the same upon Terence Burton.

9. When contacted by Office of Disciplinary Counsel and Respondent's Counsel, the Marion County Circuit Clerk stated that the Clerk's office has no policy whereby blank pro se answer forms are routinely attached to the service copy of complaints and summons in divorce cases. However, the Circuit Clerk advised Respondent's Counsel that it is possible that Mr. Loftus' account of the students' conduct at the time of their filing of the pleadings in the Burton divorce case is accurate.

10. There has been no evidence adduced in the investigation of this disciplinary matter that Respondent ever directed student attorneys Loftus or Blake to file a pro se answer form with the Marion County Circuit Clerk's office or to serve such a form upon Complainant Burton. There is no evidence that Respondent was unaware that the ethical prohibition against preparing pleadings for both parties in a divorce case or that he ever advised the student attorneys that they might prepare pleadings for both parties in a divorce case. There is also no evidence that Respondent was aware, prior to the filing of the disciplinary complaint by Mr. Burton and the issue being raised by Mr. Burton's counsel at the hearing on plaintiff's motion for temporary relief in the Burton divorce case, that a blank pro se answer form had been attached to the complaint and summons in the Burton divorce case, or that such a form might be served upon Terence Burton.

11. There has been no evidence adduced in the investigation of this disciplinary matter that Terence Burton was actually prejudiced by service of a blank pro se answer form upon him. In that

regard, it is clear that Mr. Burton never utilized a pro se answer form in his pursuit of the divorce case. Complainant Burton was served with the summons and complaint at 10:45 A.M. on October 8, 1997. He retained counsel, Pamela Folickman, Esquire, on October 13, 1997, to file his answer in the divorce case. At all times subsequent to October 13, 1997, Complainant Burton has availed himself of legal counsel through Ms. Folickman, who continues to represent Complainant in the divorce and related matters.

12. After the filing of the disciplinary complaint in this matter, the West Virginia University Clinical Law Program, with the assistance of Respondent, initiated steps to ensure that the events giving rise to the disciplinary complaint at issue here not occur in the future. As part of the student orientation at the beginning of students' tenure in the Clinical Law Program, students are provided with a manual outlining clinic policies, including student responsibilities in the handling of clinic cases. Since the filing of the present disciplinary complaint, a paragraph has been added to the manual stating the following:

Sometimes court or administrative personnel will suggest that additional forms be filed which have not been approved by the supervisor. Student-Attorneys do not have authority to make such filings. If this situation occurs, those Student Attorneys should call their supervisor for instructions.

Later, during the orientation, students are given a quiz that includes a question based upon the above provision and the circumstances giving rise to the present disciplinary matter. Moreover, students are advised in class discussions regarding a lawyer's ethical duties that a student-attorney may never prepare or serve a blank pro se answer form or any other form answer upon a defendant in a divorce case, and students are reminded of the ethical prohibition against preparing pleadings for both parties in a divorce case or any other sort of case the clinical students might handle.

13. In addition to the steps described in Paragraph 12, Respondent, in an effort to ensure that students under his supervision never engage in conduct that might give rise to a similar disciplinary complaint in the future, now discusses the events giving rise to the present disciplinary case with the students he supervises, he reiterates the policy against completing and filing anything with a court that the supervisor has not approved, and he advises students that they should never prepare pleadings or provide even a blank pro se answer form to an opposing party in a divorce action.

14. Respondent has expressed his sincere regret with respect to the circumstances giving rise to the present disciplinary matter, and Respondent has acknowledged that a lawyer never should cause even a blank pro se answer form to be attached and served with a complaint and summons on a defendant in a divorce action.

15. The parties have attached hereto exhibits, including affidavits of Respondent, of law students Loftus, Blake, and Ingham, and letters of the Complainant. Also attached are letters from the Office of Disciplinary Counsel and the Marion County Circuit Clerk with regard to her office policy, and that section of the Clinical Law Program's manual addressing what students should do if given forms by a circuit clerk for completion.

RECOMMENDED DECISION

16. In light of the above stipulations, including the definitive statement that there is no evidence that Respondent ever intended that a pro se answer form be served upon Terence C. Burton, and that there was no actual prejudice to Mr. Burton, that the Clinical Law Program and Respondent have taken remedial steps to ensure that the circumstances giving rise to the present disciplinary case

cannot occur in future, and the fact that the Office of Disciplinary Counsel is aware of no prior ethical complaints being filed against Respondent in West Virginia or any other jurisdiction, it is the joint recommendation of Respondent and the Office of Disciplinary Counsel that no further action be taken against Respondent in this matter, and that the charge now pending against Respondent be dismissed with a finding of no misconduct.

17. 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.

18. 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.

19. 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.

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 Steven Johnston Knopp, on this,
the _____ day of October, 1998.

Steven Johnston Knopp (WVSB No. 2085)
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, on this, the _____ day of October, 1998.

Randal A. Minor, Esquire (WVSB No. 2577)
Respondent
West Virginia University College of Law
Post Office Box 6130
Morgantown, West Virginia 26506-6130
(304) 293-8555

Signed by Counsel for Respondent, Charles R. DiSalvo, on this,
the _____ day of October, 1998.

Charles R. DiSalvo, Esquire (WVSB No. 1022)
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