

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 19th day of April, 2000, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 23734

G. Ernest Skaggs, a member of The West Virginia State Bar, Respondent

AND

Office of Lawyer Disciplinary Counsel,  
Petitioner

vs.) No. 25355

G. Ernest Skaggs, a member of The West Virginia State Bar, Respondent

On a former day, to-wit, April 3, 2000, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Claudia W. Bentley, its chairperson, and presented to the Court, pursuant to Rule 3.12 of the Rules of Lawyer Disciplinary Procedure, its written recommended disposition which adopted Stipulated Facts and Conclusions of Law agreed to by all parties herein, finding that the respondent violated Rules 3.5(c) and 8.4(b) of the Rules of Professional Conduct, and recommending that the respondent, G. Ernest Skaggs, be admonished and be required to reimburse the Lawyer Disciplinary Board for the costs of the disciplinary proceeding. Thereafter, on the 11th day of April, 2000, came the Office of Disciplinary Counsel, by Bruce A. Kayuha, Chief Disciplinary Counsel, pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary

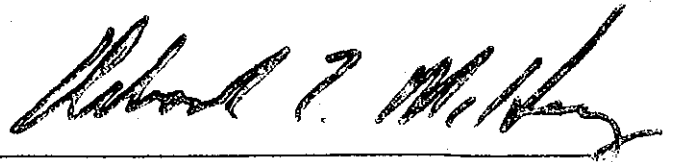
Procedure, and presented to the Court its consent thereto. Finally, on the 14th day of April, 2000, came the respondent, G. Ernest Skaggs, by James B. Billings, his attorney, pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court his consent thereto.

Upon consideration whereof, the Court doth hereby adopt the aforesaid recommendations and doth hereby find that respondent violated Rules 3.5(c) and 8.4(b) of the Rules of Professional Conduct. It is therefore ordered that the respondent, G. Ernest Skaggs be, and he hereby is, admonished. It is further ordered that the respondent reimburse the Lawyer Disciplinary Board for the costs of the disciplinary proceeding. Justices Starcher and McGraw would adopt the recommendations but without the requirement to reimburse the Lawyer Disciplinary Board for the expenses and costs on the charge of which respondent was acquitted.

Service upon all parties herein shall constitute sufficient notice of the contents.

A True Copy

Attest:



Clerk, Supreme Court of Appeals

BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

At Charleston

OFFICE OF DISCIPLINARY COUNSEL,

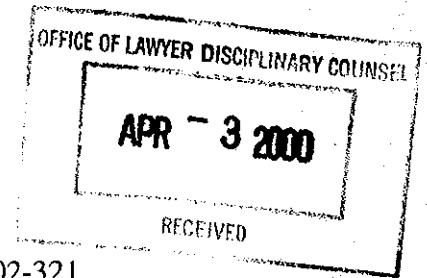
Petitioner,

v.

G. ERNEST SKAGGS, an active member of  
The West Virginia State Bar,

Respondent.

I.D. No.: 98-02-321  
Supreme Court No. 25355



**Recommended Findings of Fact, Conclusions of Law  
and Recommended Discipline**

This matter was submitted on Stipulations by the parties, and counsel. [Attachment A]

Upon consideration of the Amended Stipulations and the record, the Hearing Panel Subcommittee [Claudia W. Bentley, Chairperson; Donna Donathan, Lay Member; and Nancy C. Hill] makes the following Recommendation to the Court:

***Findings of Fact***

1. G. Ernest Skaggs (hereinafter "Respondent") is a licensed member of The West Virginia State Bar who practices in Fayette and Summers Counties, from an office in Fayetteville, 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 29, 1986.
2. This matter involves consolidated Statements of Charges, arising from incidents in 1994, 1995 and 1998, respectively. I.D. No. 98-02-321, is the number assigned to consolidated I.D. Nos. 94-02-140 and 96-02-216.

3. The Amended Stipulations submitted, and this Recommended Decision, resolve all matters at issue in the consolidated disciplinary cases.

Stipulations Relative to the Incident of January 6, 1994 (Count I)

4. At approximately 10:00 a.m. on January 6, 1994, Respondent and attorney Joseph Aucremane were present in Summers County Circuit Court for a hearing pertaining to a personal injury case. Robert A. Irons, Judge of the Circuit Court of Summers County (hereinafter Judge Irons) presided over the hearing. At the end of the hearing, Mr. Aucremanne went to his office and prepared an Order reflecting the Court's ruling to bring back to the Courthouse for Respondent's signature. Respondent agreed to sign the Order that day and told Mr. Aucremanne he would probably be at the courthouse until 1:00 p.m.
5. At approximately 11:00 a.m. Judge Irons presided over a hearing in a domestic relations case. Respondent was present and represented one of the parties. At approximately 12:40 p.m., the Court recessed for lunch. Respondent went into the anteroom adjacent to the courtroom to retrieve his briefcase. Mr. Aucremanne was waiting in the anteroom with the Order. When Respondent walked in, Mr. Aucremanne tapped him on the stomach with the Order and asked him to sign the document. Respondent told Mr. Aucremanne he did not work for him and that he would sign it after lunch and walked back in the courtroom. Mr. Aucremanne followed Respondent back into the courtroom and the two began to argue.
6. Summers County Deputy Johnny L. Mann, Judge Irons's Bailiff, immediately warned Respondent that his conduct was inappropriate. However, Respondent continued to yell at Mr. Aucremanne. Judge Irons asked Respondent to come into his chambers. Deputy Mann escorted Respondent into the room. Judge Irons then told Respondent to calm down and control his temper. Respondent raised his voice in talking to Judge Irons.

7. Judge Irons unsuccessfully tried to reason with Respondent and again asked him to calm down. Respondent stated that no one could tell him what to do.
8. The Judge then told Respondent that if he did not calm down, he could sit in jail until he cooled off. Respondent then took his coat off and said he wasn't going anywhere. Judge Irons then told Deputy Mann to take Respondent to jail.
9. Deputy Mann placed his hand on Respondent's arm to escort him to jail, and Respondent removed Mann's hand and said he was not going anywhere. Deputy Mann then radioed for assistance.
10. Department of Natural Resources Officer C.D. Hunt arrived on the scene a short while later. Then Respondent was thrown to the floor and handcuffed. Respondent was then taken to the Summers County Jail.
11. After a period of time, Judge Irons brought Respondent back into the courtroom and told him he was being held in civil contempt for failing to control his temper and verbally attacking the Court. The Judge told Respondent that he would be released if he paid a \$100.00 fine and apologized to the Court, Deputy Mann and Officer Hunt. Respondent refused and was escorted back to jail.
12. On January 7, 1994, by counsel, Respondent filed a Petition for Writ of Habeas Corpus in the West Virginia Supreme Court of Appeals asking the Sheriff of Summers County to show cause why he was holding Respondent in civil contempt. Later that day, the State Supreme Court issued a rule to show cause and set a hearing for January 25, 1994. Respondent was then released from jail pending a decision from the State Supreme Court. The hearing was held on the scheduled date, and on February 2, 1994, the State Supreme Court denied Respondent's Writ. Respondent then wrote a letter of apology to Judge Irons. The February 2 letter provided in pertinent part: "Pursuant to the conversations between our

attorneys, this letter is being written. I apologize in general for my conduct before the Court." Respondent also apologized to Officer Hunt and Officer Mann.

13. On September 26, 1995, as a result of negotiations conducted by the parties in the middle of the trial, the Special Prosecuting Attorney filed an information charging Respondent with the misdemeanor offense of obstructing an officer. Respondent pled nolo contendere to that charge and was given a \$500.00 fine and six months unsupervised supervision. That probationary period was successfully completed.
14. The parties submitted "Stipulated Findings of Fact, Conclusions of Law and Recommended Discipline" to Hearing Panel Subcommittee in 1994. In the stipulated "Recommend Discipline", Respondent agreed to be evaluated by a psychiatrist. Pursuant to the agreement, Respondent submitted to a psychiatric evaluation by John Hutton, M.D. on September 29, 1994. Dr. Hutton suggested as a "compromise solution from the medical perspective" that there be a follow-up evaluation at three months and six months. In light of the time which has passed, Respondent volunteered to submit to a follow-up evaluation with Dr. Hutton. The second evaluation was conducted on November 21, 1996, by Dr. Hutton, and his report was very positive. No follow-up evaluation was deemed to be necessary.

Stipulations Relative to the Incident of September 26, 1995 (Count III)

15. Respondent was charged with the misdemeanor offense in the Circuit Court of Summers County, Case No. 95-M-29. The facts underlying this prosecution have been set forth in paragraphs numbered 4-13 herein. Respondent was represented by attorney Michael C. Farber.
16. On September 26, 1995, Respondent entered a plea of no contest before the Honorable James O. Holliday to the misdemeanor offense of obstructing an officer. The Court asked Respondent a series of questions to

determine whether his plea was being given knowingly and voluntarily. The Court repeatedly stated that Respondent faced a possible penalty of a fine of \$50 to \$500 and not more than one year in the county jail.

17. During this plea taking, the Court asked Mr. Skaggs, "Has anyone made any promises to you with respect to punishment or probation?" Respondent answered, "No, sir." The Court asked a second time, whether anyone had "made any promises to you with respect to punishment or probation". Respondent answered again, "No, sir."
18. On October 12, 1995, Respondent filed a "Motion to Set Aside Plea" which alleged that Mr. Farber had misrepresented to him what the punishment would be on the day he entered the plea. He alleged in his motion:

*The defendant then went into the law library where his wife, Nancy Skaggs, Tom Briers, and Pam Jeffries were waiting and was there with them when his attorney came into the room and stated that we have a plea agreement, a nolo contendere plea, to obstruction and that it was just a \$50.00 fine, no jail time, no probation, or no home confinement. It would be just a \$50.00 fine only. There would have to be a presentence report, but that was just because the Judge said he had never done a sentencing without having one prepared. When the defendant's wife asked if the plea could be binding on the Court, Mr. Farber left the room and came back a few minutes later and stated that the Judge says he has never accepted a binding plea in all of the years on the bench, but everything was OK. He further stated that we ran it by the Judge and he approved it. He stated several times that it was a \$50.00 fine only.*

\* \* \*

*The only difference between the time of the defendant's refusal of the obstruction plea that morning and after the Court's afternoon recess was that Michael Farber affirmatively and emphatically*

*stated that a deal had been cut and it was a \$50.00 fine only.*

19. The former Chief Lawyer Disciplinary Counsel entered into an agreement with counsel for the Respondent that no additional disciplinary action would be sought based upon the matters set forth in Count III.

Stipulations Relative to the Incident of January 1, 1998 (Count II)

20. For nearly a year and a half, Heather Skaggs, Respondent's daughter, had been attending Concord College. She was on academic probation once.
21. On the night of the incident of January 1, 1998, there was a domestic dispute between Heather Skaggs and Respondent G. Ernest Skaggs which arose from the fact that Heather again had failing grades and had been putting excessive charges on her credit cards. Respondent told Heather that he was pulling her out of Concord College, and that she could come back home and either go to work or to the College of West Virginia. Heather has a unique hearing problem, which could not be corrected until recently when new technology was developed. Therefore, one cannot be certain exactly what she heard.
22. On January 1, 1998, as she had done in the past, Heather grabbed the car keys and was going to head back to the Skagg's home in Hinton where she lived alone. The roads were still slick from a recent snow storm. Respondent grabbed the car keys from her hand since he did not want her rushing off on bad roads. During this process, Heather fell to the floor. At that point her fifteen year old brother came into the room and got into a screaming match. Heather jumped up and went screaming out the door, and a neighbor called the police.
23. When Heather did not want to sign the domestic violence petition, she was told she would be charged with giving false information to a police officer. She contacted the Prosecuting Attorney, Magistrate's Office, and Officer Pat Tygrett and told them she



refused to participate in any prosecution. Heather was threatened by Pat Tygrett that she would be prosecuted for giving police officers false information. Heather then went to North Carolina so that she would not have to appear against Respondent. The domestic violence petition and the domestic battery charge were dismissed.

24. Heather is now married, and she and her husband are both in college. They are the parents of a little boy who is nearly one year old. There had never been an incident in the family similar to the incident of January 1, 1998, and there has never been any kind of incident since that date. The relationship between Heather and her family and the Respondent and his wife is a very good one, and the family stays with the Respondent and his wife two to three days a week. The rest of the time they live in the house in Hinton.
25. Even though the charges were only misdemeanors, the Respondent reported them to the State Bar himself, as he did the incident of January 6, 1994.
26. After the police officers arrived, Respondent went out on the porch to find out why they were there. He did not resist the search and in fact allowed the officer to search him twice. However, he was charged with obstruction. It is not Respondent's intention to retry the case. The fact remains he was convicted of obstruction. However, following a trial on appeal of his conviction of obstruction in Fayette County Magistrate Court before Judge Robert Burnside, the Judge found as follows: "The officer had a right to pat down the defendant and during the patdown, the officer must be in charge and must decide when the pat-down is complete. When the defendant turned prior to being told to turn by the police officers, his actions hindered the police officer. The scope of the pat-down is not the important issue in the case, but the issue is the defendant not obeying the officer."
27. Judge Burnside sentenced the Respondent to forty-eight hours in jail and assessed a fine of \$250.00 against him. On petition to the Supreme Court of Appeals of West Virginia, the case was refused.

28. Respondent states that the obstruction which occurred was a minor infraction. As he turned to talk to the officer, because he thought the patdown was finished, he unintentionally touched the officer since when he turned to talk to the officer, he was practically in Respondent's face. There was no intent on the part of the Respondent to obstruct the officer.
29. Respondent requested a stay from the circuit court to file a Writ of Certiorari in the United States Supreme Court. However, he decided to accept the punishment of the Court and never filed the documents in the United States Supreme Court. He served forty-eight hours at the Central Regional Jail at Flatwoods, West Virginia, beginning on September 29, 1999 and ending October 1, 1999.

#### Findings Relative to Mitigation<sup>1</sup>

30. There were no other incidents following the confrontation in Judge Irons's courtroom until nearly five years later, and this arose out of a misunderstanding between the Respondent and his daughter. The incident on January 1, 1998, did not occur in the courtroom and was in no way similar to the incident that occurred on January 6, 1994. Neither conviction reflects adversely on Respondent's honesty, trustworthiness, or fitness as a lawyer.
31. There is no rational or logical relationship between the events occurring in 1994, 1995 and 1998.
32. The Respondent's self-reporting of the domestic is considered in mitigation.
33. The Respondent's acceptance of responsibility for his actions in each criminal matter is considered a mitigating factor.

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<sup>1</sup> A mitigation hearing was requested and scheduled pursuant to Rule 3.18 of the Rules of Lawyer Disciplinary Procedure; however, the hearing was canceled when Stipulations were reached.

34. The criminal penalties imposed by the circuit courts in the underlying matters, and Respondent's incarceration, fines, embarrassment and humiliation therefrom is considered in mitigation.
35. Respondent has expressed his sincere regret with respect to the circumstances giving rise to the present disciplinary matter.
36. Respondent agrees to pay the costs of these proceedings.

### *Conclusions of Law*

1. The Office of Disciplinary Counsel bears the burden of proof as to the Charges. Sy. Pt. 1, Committee on Legal Ethics v. Pence, 216 S.E.2d 236 (W.Va. 1975).
2. The charges must be proven "by full, preponderating and clear evidence". Sy. Pt. 1, Committee on Legal Ethics v. Pence, 216 S.E.2d 236 (W.Va. 1975).
3. Rule 3.5 of the Rules of Professional Conduct prohibits a lawyer from "engag[ing] in conduct intended to disrupt a tribunal".
4. Rule 8.4 of the Rules of Professional Conduct provides, in part:  
It is professional misconduct for a lawyer to:  
  - (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects...
5. Upon review of the Stipulations and matters of record, the Office of Disciplinary Counsel met its burden of proof relative to Count I (1/6/94 Incident), and violations of Rule 3.5 and 8.4 have been established.
6. Upon review of the Stipulations and matters of record, the Office of Disciplinary Counsel has not met its burden of establishing a violation of Rule 8.4 "by full, preponderating and

clear evidence" relative to Count II (1/1/98 Incident). Sy. Pt. 1, Committee on Legal Ethics v. Pence, 216 S.E.2d 236 (W.Va. 1975).

6. Rule 3.3 of the Rules of Professional Conduct prohibits a lawyer from knowingly "mak[ing] a false statement of material fact or law to a tribunal".

7. Upon review of the Stipulations and matters of record, the Office of Disciplinary Counsel has not met its burden of establishing a violation of Rule 3.3 or Rule 8.4 "by full, preponderating and clear evidence" relative to Count III (9/26/95 Incident). Sy. Pt. 1, Committee on Legal Ethics v. Pence, 216 S.E.2d 236 (W.Va. 1975).

***Recommended Discipline***

Admonishment and costs of these proceedings.

Dated: 30 March 2000

Respectfully submitted,

Hearing Panel Subcommittee

By: Claudia W. Bentley

Its: Chairperson

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

**RE: G. ERNEST SKAGGS**, an active member of  
The West Virginia State Bar

I.D. No.: 98-02-321  
Supreme Court No. 25355

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**AMENDED STIPULATIONS AND RECOMMENDED DECISION**

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This day comes the Respondent, G. Ernest Skaggs, by counsel, James Billings, 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 matters. Previously, a motion to consolidate I.D. No 94-02-140 and 96-02-216 was granted. All charges and issues are now within the above-cited number. These stipulations and recommendations are made in an effort to resolve all matters at issue in this disciplinary case.

**STIPULATIONS FROM THE INCIDENT OF JANUARY 6, 1994**

**COUNT I**

1. G. Ernest Skaggs (hereinafter "Respondent") is a licensed member of The West Virginia State Bar who practices in Fayette and Summers Counties, from an office in Fayetteville, 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 29, 1986.

2. At approximately 10:00 a.m. on January 6, 1994, Respondent and attorney Joseph Aucremanne were present in Summers County Circuit Court for a hearing pertaining to a personal injury case. Robert A. Irons, Judge of the Circuit Court of Summers County (hereinafter Judge Irons) presided over the hearing. At the end of the hearing, Mr. Aucremanne went to his office and prepared an Order reflecting the Court's ruling to bring back to the Courthouse for Respondent's signature. Respondent agreed to sign the Order that day and told Mr. Aucremanne he would probably be at the courthouse until 1:00 p.m.

3. At approximately 11:00 a.m., Judge Irons presided over a hearing in a domestic relations case. Respondent was present and represented one of the parties. At approximately 12:40 p.m., the Court recessed for lunch. Respondent went into the anteroom adjacent to the courtroom to retrieve his briefcase. Mr. Aucremanne was waiting in the anteroom with the Order. When Respondent walked in, Mr. Aucremanne tapped him on the stomach with the Order and asked him to sign the document. Respondent told Mr. Aucremanne he did not work for him and that he would sign it after lunch and walked back in the courtroom. Mr. Aucremanne followed Respondent back into the courtroom and the two began to argue.

4. Summers County Deputy Johnny L. Mann, Judge Irons's Bailiff, immediately warned Respondent that his conduct was inappropriate. However, Respondent continued to yell at Mr. Aucremanne. Judge Irons asked Respondent to come into his chambers. Deputy

Mann escorted Respondent into the room. Judge Irons then told Respondent to calm down and control his temper. Respondent raised his voice in talking to Judge Irons.

5. Judge Irons unsuccessfully tried to reason with Respondent and again asked him to calm down. Respondent stated that no one could tell him what to do.

6. The Judge then told Respondent that if he did not calm down, he could sit in jail until he cooled off. Respondent then took his coat off and said he wasn't going anywhere. Judge Irons then told Deputy Mann to take Respondent to jail.

7. Deputy Mann placed his hand on Respondent's arm to escort him to jail, and Respondent removed Mann's hand and said he was not going anywhere. Deputy Mann then radioed for assistance.

8. Department of Natural Resources Officer C. D. Hunt arrived on the scene a short while later. Then Respondent was thrown to the floor and handcuffed. Respondent was then taken to the Summers County Jail.

9. After a period of time, Judge Irons brought Respondent back into the courtroom and told him he was being held in civil contempt for failing to control his temper and verbally attacking the Court. The Judge told Respondent that he would be released if he paid a \$100.00 fine and apologized to the Court, Deputy Mann and Officer Hunt. Respondent refused and was escorted back to jail.

10. On January 7, 1994, by counsel, Respondent filed a Petition for Writ of Habeas Corpus in the West Virginia Supreme Court of Appeals asking the Sheriff of Summers County to show cause why he was holding Respondent in civil contempt. Later that day, the

State Supreme Court issued a rule to show cause and set a hearing for January 25, 1994. Respondent was then released from jail pending a decision from the State Supreme Court. The hearing was held on the scheduled date, and on February 2, 1994, the State Supreme Court denied Respondent's Writ. Respondent then wrote a letter of apology to Judge Irons. The February 2 letter provided in pertinent part: "Pursuant to the conversations between our attorneys, this letter is being written. I apologize in general for my conduct before the Court." Respondent also apologized to Officer Hunt and Officer Mann.

11. On September 26, 1995, as a result of negotiations conducted by the parties in the middle of the trial, the Special Prosecuting Attorney filed an information charging Respondent with the misdemeanor offense of obstructing an officer. Respondent pled nolo contendere to that charge and was given a \$500.00 fine and six months unsupervised probation. That probationary period was successfully completed.

12. The parties submitted "Stipulated Findings of Fact, Conclusions of Law and Recommended Discipline" to the Hearing Panel Subcommittee in 1994. In the stipulated "Recommended Discipline", Respondent agreed to be evaluated by a psychiatrist. Pursuant to the agreement, Respondent submitted to a psychiatric evaluation by John Hutton, M.D. on September 29, 1994. Dr. Hutton suggested as a "compromise solution from the medical perspective" that there be a follow-up evaluation at three months and six months. In light of the time which had passed, Respondent volunteered to submit to a follow-up evaluation with Dr. Hutton. The second evaluation was conducted on November 21, 1996, by Dr.



Hutton, and his report was very positive. No follow-up evaluation was deemed to be necessary.

## STIPULATIONS FOR THE INCIDENT OF JANUARY 1, 1998

### COUNT II

13. G. Ernest Skaggs (hereinafter "Respondent") is a licensed member of The West Virginia State Bar who practices in Fayette and Summers Counties, from an office in Fayetteville, 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 29, 1986.

14. For nearly a year and a half, Heather Skaggs, Respondent's daughter, had been attending Concord College. She was on academic probation once.

15. On the night of the incident of January 1, 1998, there was a domestic dispute between Heather Skaggs and Respondent G. Ernest Skaggs which arose from the fact that Heather again had failing grades and had been putting excessive charges on her credit cards. Respondent told Heather that he was pulling her out of Concord College, and that she could come back home and either go to work or to the College of West Virginia. Heather has a unique hearing problem, which could not be corrected until recently when new technology was developed. Therefore, one cannot be certain exactly what she heard.

16. On January 1, 1998, as she had done in the past, Heather grabbed the car keys and was going to head back to the Skaggs's home in Hinton where she lived alone. The roads were still slick from a recent snow storm. Respondent grabbed the car keys from her hand

since he did not want her rushing off on bad roads. During this process, Heather fell to the floor. At that point her fifteen year old brother came into the room and got into a screaming match. Heather jumped up and went screaming out the door, and a neighbor called the police.

17. When Heather did not want to sign the domestic violence petition, she was told she would be charged with giving false information to a police officer. She contacted the Prosecuting Attorney, Magistrate's Office, and Officer Pat Tygrett and told them she refused to participate in any prosecution. Heather was threatened by Pat Tygrett that she would be prosecuted for giving police officers false information. Heather then went to North Carolina so that she would not have to appear against Respondent. The domestic violence petition and the domestic battery charge were dismissed. The only additional charge was the obstruction charge.

18. Heather is now married, and she and her husband are both in college. They are the parents of a little boy who is nearly one year old. There had never been an incident in the family similar to the incident of January 1, 1998, and there has never been any kind of incident since that date. The relationship between Heather and her family and the Respondent and his wife is a very good one, and the family stays with the Respondent and his wife two to three days a week. The rest of the time they live in the house in Hinton.

19. Even though the charges were only misdemeanors, the Respondent reported them to the State Bar himself, as he did the incident of January 6, 1994.

20. After the police officers arrived, Respondent went out on the porch to find out why they were there. He did not resist the search and in fact allowed the officer to search him twice. However, he was charged with obstruction. It is not the Respondent's intention to retry the case. The fact remains he was convicted of obstruction. However, following a trial on appeal of his conviction of obstruction in Fayette County Magistrate Court before Judge Robert Burnside, the Judge found as follows: "The officer had a right to pat down the defendant and during the patdown, the officer must be in charge and must decide when the pat-down is complete. When the defendant turned prior to being told to turn by the police officers, his actions hindered the police officer. The scope of the pat-down is not the important issue in the case, but the issue is the defendant not obeying the officer."

21. Judge Burnside sentenced the Respondent to forty-eight hours in jail and assessed a fine of \$250.00 against him. On petition to the Supreme Court of Appeals of West Virginia the case was refused.

22. Respondent states that the obstruction which occurred was a minor infraction. As he turned to talk to the officer, because he thought the patdown was finished, he unintentionally touched the officer since when he turned to talk to the officer, he was practically in Respondent's face. There was no intent on the part of the Respondent to obstruct the officer.

23. Respondent requested a stay from the circuit court to file a Writ of Certiorari in the United States Supreme Court. However, he decided to accept the punishment of the court and never filed the documents in the United States Supreme Court. He served forty-

eight hours at the Central Regional Jail at Flatwoods, West Virginia, beginning on September 29, 1999, and ending on October 1, 1999.

24. Judge Irons held the Respondent in contempt of court and fined him one hundred dollars. Further, Judge Holliday, through the Summers County Circuit Court, determined and administered the proper disposition for the incident on January 6, 1994, when he decided that the proper punishment for Respondent's nolo contendere plea to obstruction was a five hundred dollar fine and six months unsupervised probation. That probationary period was successfully completed. As a part of the negotiation process, Dr. Hutton examined the Respondent on two separate occasions and found nothing wrong with him.

**STIPULATIONS FROM THE NOLO CONTENDERE  
PLEA ON SEPTEMBER 26, 1995**

**COUNT III**

25. Respondent was charged with the misdemeanor offense of obstructing an officer in the Circuit Court of Summers County, Case No. 95-M-29. The facts underlying this prosecution have been set forth in Count I of the Statement of Charges. Respondent was represented by attorney Michael C. Farber.

26. On September 26, 1995, Respondent entered a plea of no contest before the Honorable James O. Holliday to the misdemeanor offense of obstructing an officer. The Court asked Respondent a series of questions to determine whether his plea was being given

knowingly and voluntarily. The Court repeatedly stated that Respondent faced a possible penalty of a fine of \$50 to \$500 and not more than one year in the county jail.

27. During this plea taking, the Court asked Mr. Skaggs, "Has anyone made any promises to you with respect to punishment or probation?". Respondent answered, "No, sir." The Court asked a second time, whether anyone had "made any promises to you with respect to punishment or probation". Respondent answered again, "No, sir."

28. On October 12, 1995, Respondent filed a "Motion to Set Aside Plea" which alleged that Mr. Farber had misrepresented to him what the punishment would be on the day he entered the plea. He alleged in his motion:

The defendant then went into the law library where his wife, Nancy Skaggs, Tom Briers, and Pam Jeffries were waiting and was there with them when his attorney came into the room and stated that we have a plea agreement, a nolo contendere plea, to obstruction and that it was just a \$50.00 fine, no jail time, no probation, or no home confinement. It would be just a \$50.00 fine only. There would have to be a presentence report, but that was just because the Judge said he had never done a sentencing without having one prepared. When the defendant's wife asked if the plea could be binding on the Court, Mr. Farber left the room and came back a few minutes later and stated that the Judge says he has never accepted a binding plea in all of the years on the bench, but everything was OK. He further stated that we ran it by the Judge and he approved it. He stated several times that it was a \$50.00 fine only.

\* \* \*

The only difference between the time of the defendant's refusal of the obstruction plea that morning and after the Court's afternoon recess was that Michael Farber affirmatively and emphatically stated that a deal had been cut and it was a \$50.00 fine only.

29. The former Chief Lawyer Disciplinary Counsel entered into an agreement with counsel for Respondent that no additional disciplinary action would be sought based upon the matters set forth in Count III.

## ISSUES IN MITIGATION OF THE OFFENSES AND PENALTY

30. There were no other incidents following the confrontation in Judge Irons's courtroom until nearly five years later, and this arose out of a misunderstanding between the Respondent and his daughter. The incident on January 1, 1998, did not occur in the courtroom and was in no way similar to the incident that occurred on January 6, 1994. Neither conviction reflects adversely on Respondent's honesty, trustworthiness, or fitness as a lawyer.

31. There is no rational or logical relationship between the events occurring in 1994 and in 1998. The parties recommend to the Hearing Panel Subcommittee that no inference be drawn as to such a relationship.

32. Further, in mitigation, the parties recommend to the Hearing Panel Subcommittee that Respondent's self-reporting of the domestic matter be considered as mitigation of any penalty to be imposed.

33. The parties recommend to the Hearing Panel Subcommittee that Respondent's acceptance of responsibility for his actions in each criminal matter be considered as a mitigating factor in any penalty to be imposed.

34. The parties recommend that the Hearing Panel Subcommittee consider the passage of time during which the charges in this matter have not been resolved be considered a mitigating factor in any penalty to be imposed.

35. The parties recommend that the Hearing Panel Subcommittee consider the criminal penalties imposed by the circuit courts in the underlying matters, and Respondent's

incarceration, fines, embarrassment and humiliation therefrom also be considered as mitigation of any penalty to be imposed.

36. Respondent further states to the Hearing Panel Subcommittee that he deeply regrets the events which led to his being charged in this matter, and has previously tendered his apologies to Judge Irons, and herewith to his daughter and to the Lawyer Disciplinary Board.

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

#### STIPULATED RECOMMENDATION AS TO PENALTY

1. In consideration of the agreement of the parties with regard to the consolidated charges herein, it is recommended to the Hearing Panel Subcommittee that Respondent G. Ernest Skaggs, be admonished for his violations and conviction, and in consideration of the mitigating factors identified by the parties and stipulated thereto. Further, it is recommended that Respondent be required to pay the costs of the investigation and prosecution of this disciplinary matter.

2. In the event that the Hearing Panel Subcommittee does not agree with the stipulations and recommendations of the parties, the parties strongly urge that the Hearing Panel Subcommittee and the Supreme Court of Appeals of West Virginia impose a penalty no greater than a suspension from practice of thirty (30) days, for the reasons previously set out in our stipulations.

3. In light of the above stipulations, and in light of the mitigating factors as stated by the parties, 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 relevant 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 the above disciplinary action of admonishment be taken against the Respondent in this matter.

4. 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.

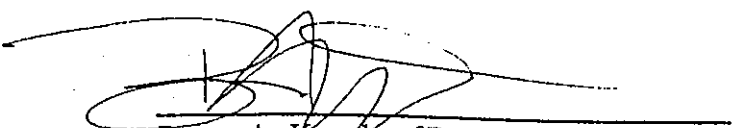
5. The stipulation is made in lieu of hearing on the Statement of Charges in the above-captioned matter providing the stipulation is accepted by the Hearing Panel Subcommittee. Both Disciplinary Counsel and Respondent recognize the Hearing Panel Subcommittee has the authority to reject these stipulations.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

6. 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.

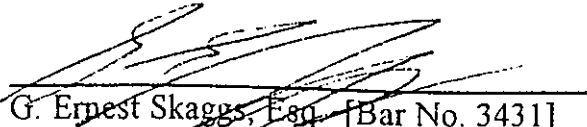


The agreement of the parties to the stipulation is evidenced by the signatures of  
Counsel and Respondent affixed below.

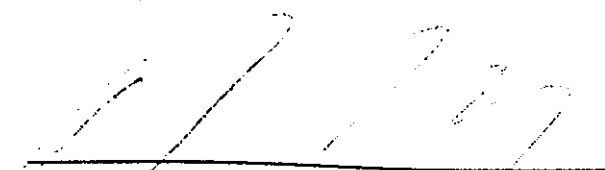
Signed for the Office of Disciplinary Counsel, by Bruce A. Kayuha, on this, the 11<sup>th</sup>  
day of February, 2000.

  
Bruce A. Kayuha [Bar No. 5034]  
Chief Lawyer Disciplinary Counsel  
Office of Disciplinary Counsel  
900 Lee Street East, Suite 1710  
Charleston, West Virginia 25301  
(304) 558-7999

Signed by Respondent, on this, the 11 day of February, 2000.

  
G. Ernest Skaggs, Esq. [Bar No. 3431]  
Respondent  
102 Third Avenue  
Fayetteville, West Virginia 25840  
(304) 574-2811

Signed by Counsel for Respondent, James B. Billings, on this, the 11<sup>th</sup> day of  
February, 2000.

  
James B. Billings, Esq. [Bar No. 0343]  
Counsel for Respondent  
23 1/2 Main Street  
Oak Hill, West Virginia 225901-3034  
304-469-9600