

APR 27 2000

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. 24229

Bradley C. Snowden, a member of The West Virginia State Bar, Respondent

On a former day, to-wit, March 16, 2000, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Allan N. Karlin, its chairperson, and presented to the Court, pursuant to Rule 3.12 of the Rules of Lawyer Disciplinary Procedure, its written recommended disposition which was agreed to by all parties herein, finding that respondent violated Rules 1.3, 1.4, 1.7(a) and 1.16(a)(1) of the Rules of Professional Conduct, and recommending that: (1) respondent's license to practice law in the State of West Virginia be suspended for a period of three months, which would be a complete suspension with respondent not engaging in any legal work or paralegal work during the three-month period; (2) respondent's license to practice law in the State of West Virginia be automatically reinstated; (3) following reinstatement, respondent be supervised in the practice of law for a period of twelve months, by an attorney in good standing with The West Virginia State Bar, of his choosing from without his law firm of Martin & Seibert, said supervising attorney to be approved by the Office of Disciplinary Counsel with an agreement containing written terms and goals for the supervision. In the event the aforesaid agreement is in dispute, the Hearing Panel Subcommittee of the Lawyer

Disciplinary Board shall resolve same; (4) respondent be required to continue psychological counseling for at least one year, and thereafter so long as it is necessary to help him deal with the problems which led to this disciplinary action; (5) respondent be required to reimburse the Lawyer Disciplinary Board for the costs of the disciplinary proceeding, with a payment plan if requested by the respondent. Finally, should the Supreme Court not adopt these recommendations, the respondent shall have the right to assert and argue the statute of limitations at issue in this case.

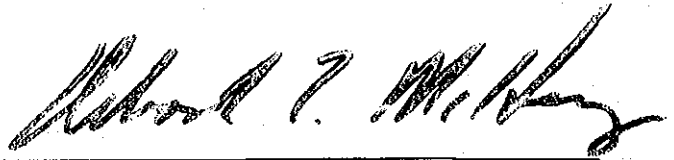
Upon consideration whereof, the Court is of opinion to and doth hereby adopt the aforesaid recommendations and doth hereby find that respondent violated Rules 1.3, 1.4, 1.7(a) and 1.16(a)(1) of the Rules of Professional Conduct. It is therefore ordered that: (1) respondent's license to practice law in the State of West Virginia be, and it hereby is, suspended for a period of three months which is to be a complete suspension with respondent not engaging in any legal work or paralegal work during the three-month period; (2) respondent's license to practice law in the State of West Virginia shall be automatically reinstated; (3) following reinstatement, respondent shall be supervised in the practice of law for a period of twelve months, by an attorney in good standing with The West Virginia State Bar, of his choosing from without his law firm of Martin & Seibert, said supervising attorney to be approved by the Office of Disciplinary Counsel with an agreement containing written terms and goals for the supervision. In the event the aforesaid agreement is in dispute, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board shall resolve same; (4) respondent shall continue psychological counseling for at least one year, and thereafter so long as it is necessary to help him deal

with the problems which led to this disciplinary action; (5) respondent shall reimburse the Lawyer Disciplinary Board for the costs of the disciplinary proceeding, and may request a payment plan suitable to his financial situation. Justice McGraw would adopt the recommendations of the Hearing Panel Subcommittee of the Lawyer Disciplinary Board without the suspension of the respondent's license to practice law. Justice Starcher would set this matter for hearing.

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

A True Copy

Attest:



Clerk, Supreme Court of Appeals

**BEFORE THE LAWYER DISCIPLINARY BOARD
HEARING PANEL**

MAR 16 1999

**IN RE: BRADLEY C. SNOWDEN, a member
The West Virginia State Bar**

**I.D. No. 95-01-228
Sup. Ct. No. 24229**

**AMENDED REPORT AND RECOMMENDATIONS
OF THE HEARING PANEL SUBCOMMITTEE**

Following the hearing in this matter, the Respondent, Bradley C. Snowden, by counsel, James D. McQueen, Jr., and the Office of Disciplinary Counsel, by Amie Johnson, submitted to the Hearing Panel Subcommittee of the Lawyer Disciplinary Board their proposed Stipulations and Recommendations regarding the above styled disciplinary matter. The recommendations in the written Stipulations and Recommendations were first presented to the Hearing Panel at the conclusion of the Hearing conducted in Martinsburg, West Virginia on February 25, 1999. At the time, the Hearing Panel Subcommittee verbally accepted those recommendations. Thereafter, the parties reduced those recommendations to writing and submitted them to the Hearing Panel Subcommittee with proposed stipulations on or about September 17, 1999. The Hearing Panel has now reviewed the written Stipulations and Recommendations and concludes that they are consistent with the recommendations presented at the conclusion of the hearing.

Based upon the evidence developed at the hearing and in the deposition and exhibits on record in this case, the Hearing Panel Subcommittee finds that the Stipulations and Recommendations are consistent with the facts and represent a reasonable and fair disposition of this matter. As a result, the Hearing Panel Subcommittee does adopt the Stipulations and Recommendations as its own. However, in light of the severity of the

Respondent's conduct, both in this matter and in prior matters, the Hearing Panel Subcommittee also states that its decision to adopt the agreed recommendations is based on a careful consideration of the evidence and, in particular, evidence that the Respondent's history of ethical violations appears to be a consequence of an emotional problem for which he is now under treatment. Given the fact that the Respondent now appears to be committed to the diligent pursuit of that treatment, that he has demonstrated a reasonable degree of insight into his problem, and that he is willing to continue in his treatment, the Hearing Panel Subcommittee concludes that a longer suspension from the practice of law would be counterproductive at this time. The Hearing Panel Subcommittee also relies, in part, on the fact that Respondent's law firm, Martin & Seibert, which is fully aware of Respondent's past misconduct, his subsequent performance and his efforts to change, continues to support him. The fact that Respondent remains a member of a law firm that is aware of his history increases the Hearing Panel Subcommittee's confidence that Respondent's conduct will be monitored in the future by his firm as well as by the supervising attorney appointed pursuant to the recommendations in this Report and that he will have the support necessary to overcome his problems. Finally, since Martin & Seibert continues to employ the Respondent, the public will not be without recourse should he ever repeat the pattern of conduct that led to this Complaint.

In adopting the Stipulations and Recommendations, the Hearing Panel Subcommittee further states that it intends these Recommendations to be strictly construed. Should the Respondent fail to live up to his agreements or should he engage in any additional ethical

violations, much more serious disciplinary action will be necessary. With that understanding, the Hearing Panel Subcommittee does adopt the proposed Stipulations and Recommendations and makes the following findings:

A. INTRODUCTION

1. Both Bradley C. Snowden ["Respondent" herein] and the Office of Disciplinary Counsel ["ODC" herein], desire to bring an agreed resolution to these charges, and therefore enter into these stipulations.

2. At the February 25, 1999 hearing on this matter, the Subcommittee verbally accepted the recommended sanction outlined below. However, it is recognized that the Subcommittee may draft the findings of fact in its Report differently from these stipulations.

3. Respondent and ODC recognize that the West Virginia Supreme Court of Appeals is the final decision-maker in lawyer disciplinary matters. The Supreme Court has the jurisdiction to issue findings, conclusions and sanctions which differ from those stipulated or those recommended by Subcommittee.

4. As a provision of the stipulated resolution in this case, Respondent conditionally waives his statute of limitations defense. If the Supreme Court rejects the sanction set forth below as being too lenient, Respondent reserves the right to then assert the statute of limitations defense to the Supreme Court. Otherwise, Respondent has waived the statute of limitations argument.

5. Respondent enters these stipulations with the advice of counsel, James D. McQueen, Jr. and Kimberly E. Williams. Respondent and Disciplinary Counsel have read,

understand and agree to the stipulations. The stipulations contain the entire agreement and there are no promises, stipulations, offers or any type of inducements by the parties hereto or by any other person. The parties have entered the stipulations of their own free will without any fraud, duress or any manner of coercion.

6. To satisfy the requirement that an evidentiary record be made in disciplinary cases, the parties have submitted or will submit to the Subcommittee and to the Supreme Court: (1) these stipulations; (2) the transcript of the partial hearing held on February 25, 1999; (3) copies of Respondent's and ODC's exhibits introduced at the February 25, 1999 hearing, all of which are deemed admitted; (4) the evidentiary deposition of Peter Centofonti taken on February 24, 1999; (5) the report of Respondent's psychologist, which will be placed under seal; and (6) the transcript of Respondent's discovery deposition taken on October 14, 1997.

B. AGREED FINDINGS OF FACT

7. Respondent was admitted to the West Virginia bar on December 2, 1992. He was previously licensed to practice law in the State of Virginia in 1985.

8. Beginning July 1991, to present, Respondent has been employed by the law firm of Martin & Seibert, now Martin & Seibert, L.C.

9. In June 1992, Delbert and Shirley Spencer were living in Florida. Delbert Spencer is also known as "Jack" or "D.J." Spencer. Delbert and Shirley Spencer had a company named D.J. Spencer Sales, Inc. Their son, John Spencer, had a company named J.R. Spencer Trucking Co., Inc. Beginning in 1991, and continuing through all times

relevant to this disciplinary case, J.R. Spencer Trucking Co., Inc. was in Chapter 7 bankruptcy in the United States District Court for the Northern District of West Virginia, Bankruptcy No. 91-30868.

10. In Virginia in 1989, Jillian Michele Cho was involved in a very serious car accident with a truck owned by J.R. Spencer Trucking Co., Inc. Jillian Cho's estate was a creditor in the bankruptcy proceeding. Virginia attorney Charles Zauzig represented Cho and in April 1992 hired Daniel T. Booth to be local counsel and represent Cho in the bankruptcy proceeding.

11. Daniel Booth is a lawyer in the Martinsburg office of Martin & Seibert, the same firm as Respondent.

12. The bankruptcy trustee, David Savasten, appeared in a Virginia civil court on behalf of the bankruptcy estate to confess that Cho's estate was entitled to a \$4 million dollar judgment.

13. Trustee Savasten filed an adversary proceeding on May 29, 1992, against John R. Spencer, D.J. Spencer Sales, Inc., and Delbert and Shirley Spencer, Adv. No. 92-03051. [ODC Ex. 4.] The trustee was attempting to pierce the corporate veil by proving that preferential transfers had been made between these parties and J.R. Spencer Trucking.

14. Delbert and Shirley Spencer were served with the adversary complaint in early June 1992.

15. In early June 1992, after receiving the adversary complaint, Delbert Spencer contacted Respondent in order to retain his services to defend the adversary proceeding.

16. On June 19, 1992, Delbert Spencer or his agent faxed a copy of the adversary complaint, summons, and a business ledger to Respondent. [ODC Ex 9.] On or about the same date, Delbert Spencer met with Respondent in person and discussed the matter.

17. Respondent told Delbert Spencer that he would take the case.

18. A conflicts check was not performed. Respondent asserts that he thought he had completed a form memo to have a conflicts check performed by firm management. However, a memo was not sent to management and one has not been located.

19. Respondent was not licensed to practice law in West Virginia until December 1992, but did not check with his supervisor(s) before accepting the Spencers' case.

20. Delbert Spencer testified that Respondent never mentioned his lack of a West Virginia law license. Respondent asserts that it is his recollection that he did so advise.

21. After the initial meeting, there were multiple telephone conversations between Respondent and Mr. Spencer concerning the case.

22. Respondent requested and received various business documents from Delbert Spencer, which were provided by either Delbert Spencer or Delbert Spencer's agent(s).¹ These documents include equipment lists, a rental agreement between D.J. Spencer Sales and J.R. Spencer Trucking, records of rent payments from J.R. Spencer Trucking to D.J. Spencer Sales, business ledgers, and banking records pertaining to D.J. Spencer Sales. [ODC Ex 9.] These documents constitute confidential client information, and were to be used to defend the adversary proceeding.

¹Delbert Spencer was frequently occupied during this same time period with a serious illness his wife was suffering, and relied on his agents and lawyer to handle the defense of the adversary matter.

23. Respondent failed to enter an appearance in the adversary proceeding or have a West Virginia licensed lawyer enter an appearance.

24. Respondent failed to file an answer to the adversary complaint.

25. On July 15, 1992, Delbert Spencer or his agent received Trustee Savasten's application for entry of a default judgment. Delbert Spencer or his agent faxed this document to Respondent on July 16, 1992 [ODC Ex 5], and Delbert Spencer spoke with Respondent on the telephone that same day.

26. Respondent did not take any action to prevent default judgment from being entered.

27. On July 17, 1992, the Bankruptcy Court entered a default judgment in the adversary proceeding against Delbert Spencer, Shirley Spencer, and D.J. Spencer Sales. [ODC Ex 6.] The judgment held Delbert and Shirley Spencer and their company D.J. Spencer Sales were liable for \$42,505.92 plus interest, and that D.J. Spencer Sales was liable for an additional \$20,275.31 plus interest. [Note: the following year, in approximately June 1993, Delbert Spencer and Trustee Savasten agreed that the judgment would be satisfied if Delbert Spencer paid \$50,000 within 60 days. Spencer paid the Trustee, but not within the required time period.]

28. Sometime in July 1992, prior to July 22, Respondent spoke with Daniel Booth about the Spencers' case. This conversation likely took place on July 20 or 21, 1992. The substance and circumstances of this conversation are disputed. Respondent asserts that this conversation took place in person, and that Respondent told Booth all he knew about the

Spencers' case he had accepted. Booth testified that this conversation took place by telephone, and denies that Respondent told him the full extent of Respondent's involvement; Booth says that Respondent did not explain that he had already accepted Spencer's case and had already accepted client information.

29. It is undisputed that during this July conversation between Respondent and Booth, Booth advised that it could be a conflict for Respondent to accept the Spencer's case and Respondent should not accept the case. Booth told Respondent that Booth was presently representing a creditor in the J.R. Spencer Trucking bankruptcy, and advised it could or would be a conflict for the firm to represent Delbert and Shirley Spencer and their company.

30. Respondent's first awareness a possible conflict was during this conversation with Daniel Booth.

31. Booth testified that had Respondent told Booth the full extent of Respondent's involvement with the Spencers, Booth would not have further represented clients with opposing interests, would not have later taken steps to collect on the default judgment which had been entered when Respondent failed to file an answer, and would not have sued Delbert and Shirley Spencer.

32. On July 22, 1992, Respondent faxed a letter dated July 21, 1992 to Delbert Spencer. In this letter Respondent advised Spencer, for the first time, that Respondent could not represent the Spencers because of a "possible conflict of interest." Respondent cited the firm's representation of an unnamed creditor to JR. Spencer Trucking's bankruptcy. This letter was copied to and received by Daniel Booth. [ODC Ex 7, 9.]

33. After the July 22, 1992 letter, Respondent continued a dialogue with Delbert Spencer. Spencer or his agent faxed the default judgment order to Respondent on July 27, 1992. There were multiple telephone conversations, including a call on August 4, 1992 where Respondent took notes on business information relevant to the adversary proceeding. On September 9, 1992, Spencer or his agent faxed Respondent additional business records. [ODC Ex 9, 14.]

34. On February 10, 1993, Respondent provided Delbert Spencer with a prepared "Motion to Set Aside the Default Judgment and a Motion to Set Order to Compel Turnover of Property." These documents were for Delbert and Shirley Spencer to file *pro se*. Nowhere on the face of the Motion does it expressly state that it was Respondent's error that caused a default to be taken. [ODC Ex 8.]

35. Respondent also sent Delbert Spencer a letter that same date, February 10, 1993, which explains how Delbert and Shirley Spencer should sign the motion, where it should be served, and provided tips on filing pleadings. This letter advised that "There is nothing further that I can do with regard to the actual litigation of the matter involved." The letter goes on to say "If you would have any questions on how to present your position, what documents should be proffered, or how to set forth your position clearly before the Court, please contact me. I would be more than willing to give you some pointers if I can." [ODC Ex 8.]

36. Respondent did not tell his supervisor(s) at Martin & Seibert anything about the Spencer's case.

37. In September 1992, the bankruptcy trustee retained Daniel Booth and Martin & Seibert to take collection action for the bankruptcy estate against Delbert and Shirley Spencer and D.J. Spencer Sales. Booth was to collect on the default judgment which had been entered on July 17, 1992 in the adversary proceeding when Respondent failed to file an answer. Booth retained Florida counsel to pursue this collection.

38. On June 30, 1993, Martin & Seibert, by attorneys Daniel Booth and John Askintowicz, filed a civil action in Circuit Court on behalf of the estate of Jillian Cho against J.R. Spencer Trucking, John Spencer, D.J. Spencer Sales, Delbert Spencer, and Shirley Spencer. The purpose of the civil action was to collect on the personal injury verdict which the bankruptcy trustee had confessed. Cho's civil complaint alleges that the corporate veil should be pierced between the Spencers and the two corporations, and relies in part on the bankruptcy default judgment which had previously pierced the corporate veil. This is the same bankruptcy default judgment which had been entered when Respondent failed to file an answer, and for which Respondent drafted the "Motion to Set Aside." [ODC Ex 11.]

39. Delbert Spencer testified that he first learned that Martin & Seibert was opposing him was when he was served with the complaint and summons in Cho's civil suit.

C. AGREED CONCLUSIONS OF LAW

40. By failing to file an answer to the adversary complaint and for not otherwise taking steps to protect the Spencers' interests, Respondent violated Rule 1.3 of the Rules of Professional Conduct, which provides:

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

41. For not performing a conflicts check and for not timely advising the Spencers that he could not represent them, the Respondent violated Rule 1.3 and Rule 1.4(a) and (b) of the Rules of Professional Conduct, which provide:

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation

42. By advising the Spencers concerning the adversary proceeding while other lawyers in his firm were representing clients directly adverse to the Spencers, both before and after he was informed of the Cho representation by Dan Booth, the Respondent violated Rule 1.7(a) and Rule 1.16(a)(1) of the Rules of Professional Conduct, which provide:

Rule 1.7 Conflict of interest: General rules.

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

Rule 1.16 Declining or terminating representation.

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

43. Because Respondent failed to advise others in his firm of his contact with and advice to the Spencers, other lawyers in his firm continued handling current cases and accepted new cases which were directly adverse to the Spencers. Respondent's failure to inform his firm of this conflict constitutes a lack of diligence in violation of Rule 1.3 of the Rules of Professional Conduct, which provides:

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

D. FACTORS IN MITIGATION OF SANCTION

44. Respondent's previous firm in Winchester, Virginia, Costello, Dickinson, Johnston, Greenlee, Coleman & McLoughlin, did not have a formal system in place to check for conflicts of interest, thus it was not Respondent's habit to perform formal conflicts checks.

45. Respondent practiced business and tax law, estate planning, estate administration, corporate organization and reorganization, which by the nature of the practice, does not involve litigation and specific time sensitive deadlines.

46. Since July 1993, Respondent's practice area has been limited to providing estate, business, and tax representation, and he does not handle litigation matters.

Respondent recognizes that his practice is more successful if he practices in areas other than litigation.

47. Respondent recognized that he had received confidential information from Delbert Spencer; however, he did not know who Jillian Cho was and did not appreciate the nature or the gravity of that representation. Respondent now recognizes that he should have had a conflicts check done before accepting client confidences, should have done further investigation of the potential conflicts when he was put on notice of such, and should have told his supervising attorney what he had done.

48. Since June 1995, Respondent has undergone psychological counseling on a weekly basis. Respondent feels that this counseling has greatly benefitted him to more effectively and decisively deal with clients and others involved in the legal process.

49. Respondent understands the nature of his problem to be that from a psychological standpoint it was very important for him to please or be able to satisfy his client, to the extent that Respondent had a very difficult time saying "No" to a client. These problems in part stemmed from a family tragedy and how he was forced to deal with it. Respondent continues to work on this problem through counseling, education and self-discipline, and reports that he is developing improved skills.

50. Respondent has agreed to continue counseling for a least one year, and thereafter so long as necessary for him to deal with the his problems.

51. The time that has passed since this occurrence has given Respondent the opportunity to improve his practices. He has not received any other ethics complaints, which he attributes to his remedial action.

E. FACTORS IN AGGRAVATION OF SANCTION

52. Respondent accepted the Spencer's case when he was not licensed to practice law in West Virginia and without checking with his supervising attorney.

53. Respondent failed to report to his supervisors that he had taken the Spencer's case, that his inaction led to a default judgment, and that he had continued advising the Spencer's even after he was put on notice of a potential conflict.

54. Respondent was not experienced in litigation matters, and thus should not have been handling the Spencer's case without assistance from a more experienced attorney. He had been notified a year earlier that he had taken a Virginia litigation case for which he was not competent to handle by himself, and should have been cognizant of this problem.

55. When the default judgment was entered in July 1992, Delbert and Shirley Spencer and their company were found liable for \$62,781.23 plus interest. Delbert Spencer testified that they were forced to sell property for less than its value in order to make payments to the Bankruptcy Trustee. Delbert and Shirley Spencer and their company only recouped this loss when they hired a new lawyer to defend the Cho suit and to sue Martin & Seibert, and a settlement eventually was reached with Martin & Seibert in January 1996.

56. When the default judgment was entered because of his failure to answer, Respondent did not notify the firm's insurance carrier, did not notify the firm, and did not

take other appropriate and timely remedial action. He tried to withdraw from the representation after the default judgment had been entered.

57. The West Virginia Board of Law Examiners initially denied Respondent's admission to the West Virginia State Bar in 1991. Respondent was already licensed in Virginia when he applied for West Virginia licensure. After he filed his application with the West Virginia Board of Law Examiners, he received notice that an ethics complaint had been filed against him in Virginia by a client Vernon Ruckman, and he responded to that complaint. Respondent failed to update his application to the West Virginia Bar by advising of the ethics complaint, as was specifically required on the application form. Thereafter, Respondent met with the District Chairman of the Character Committee in West Virginia, but failed to report the Virginia ethics complaint and specifically advised that there were no changes in his application. The Character Committee later learned of the Virginia complaint, and Respondent advised that he had done nothing wrong in the Ruckman matter. The Virginia Bar ultimately determined that Respondent had committed an ethics violation in the Ruckman matter, discuss infra. The West Virginia Board of Law Examiners denied Respondent admission to the West Virginia Bar in 1991 for these events, but allowed Respondent to reapply in 1992, after he complied with the Virginia Bar's order. Respondent was admitted to the West Virginia Bar on December 2, 1992. [ODC Ex 16.]

58. With respect to the Ruckman complaint, on June 7, 1991, the Virginia Bar reprimanded Respondent and ordered that he undergo counseling. The Virginia Bar found that in 1989 and 1990 Respondent had made false representations including telling his client

Mr. Ruckman that a suit had been filed when it had not been; telling his client that he was negotiating a settlement with the opposing attorney, and had reached a settlement amount, when there was no evidence that negotiations had ever taken place; communicating to a client's creditor that a settlement was pending when this was not true; and telling his client that negotiations had broken down when there had been no negotiations. The Virginia Bar also found that when he accepted Mr. Ruckman's case, Respondent was not competent to handle the case by himself. Respondent complied with the Virginia Bar's order by obtaining counseling and submitting a written report from a licensed psychologist that he had successfully completed the counseling and had no further unresolved issues. [ODC Ex. 17.]

F. AGREED RECOMMENDED SANCTION

59. Respondent and Disciplinary Counsel agree to the following sanction:

A. Respondent be suspended from the practice of law for a period of three [3] months. This is a full suspension from work, and Respondent is not to do any legal work or paralegal work during the suspension period. Pursuant to Rule 3.32(a) of the Rules of Lawyer Disciplinary Procedure, Respondent shall be automatically reinstated to the practice of law at the conclusion of the three month suspension period.

B. Upon his reinstatement, Respondent shall for a period of twelve [12] months be supervised in the practice of law by an attorney in good standing with the West Virginia Bar. The supervising attorney must be an attorney outside of Martin & Seibert. Respondent shall select a supervising attorney, but the selection must be approved by the Office of Disciplinary Counsel. Respondent, the supervising attorney, and Disciplinary

Counsel shall set forth written terms and goals for the supervision in a written agreement. Should ODC and Respondent not agree on the selection of supervising attorney or on the terms and goals of the supervision agreement, the Hearing Panel Subcommittee shall resolve the dispute.

C. Respondent shall continue psychological counseling for a period of at least one year, and thereafter so long as it is necessary to help him deal with the problems that led to this disciplinary case.

D. Respondent shall reimburse the Lawyer Disciplinary Board for the costs of the disciplinary proceeding, pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure. The costs as of May 25, 1999, are \$7,686.15. ODC agrees to establish a payment plan suitable to Respondent's financial situation, should he request it.

60. It is recognized that Respondent has conditionally waived his argument that the ethics complaint filed by Charles Printz against him in this matter was filed outside of the statute of limitations period provided by Rule 2.14 of the Rules of Lawyer Disciplinary Procedure [ODC Ex. 3]. It is agreed that should the West Virginia Supreme Court of Appeals reject this sanction as being too lenient, then Respondent shall have the right to assert and argue the statute of limitations to the Supreme Court.

STIPULATED AND AGREED TO BY:

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