

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 9th day of March, 1995, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 22752

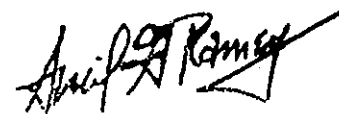
Donald G. Ferrell, a member of The
West Virginia State Bar, Respondent

On a former day, to-wit, January 23, 1995, came the the Lawyer Disciplinary Board, by Ellen F. Golden, its attorney, pursuant to Rule 3.20, Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition recommending that the respondent's, Donald G. Ferrell, a member of The West Virginia State Bar, license to practice law in the State of West Virginia, be annulled.

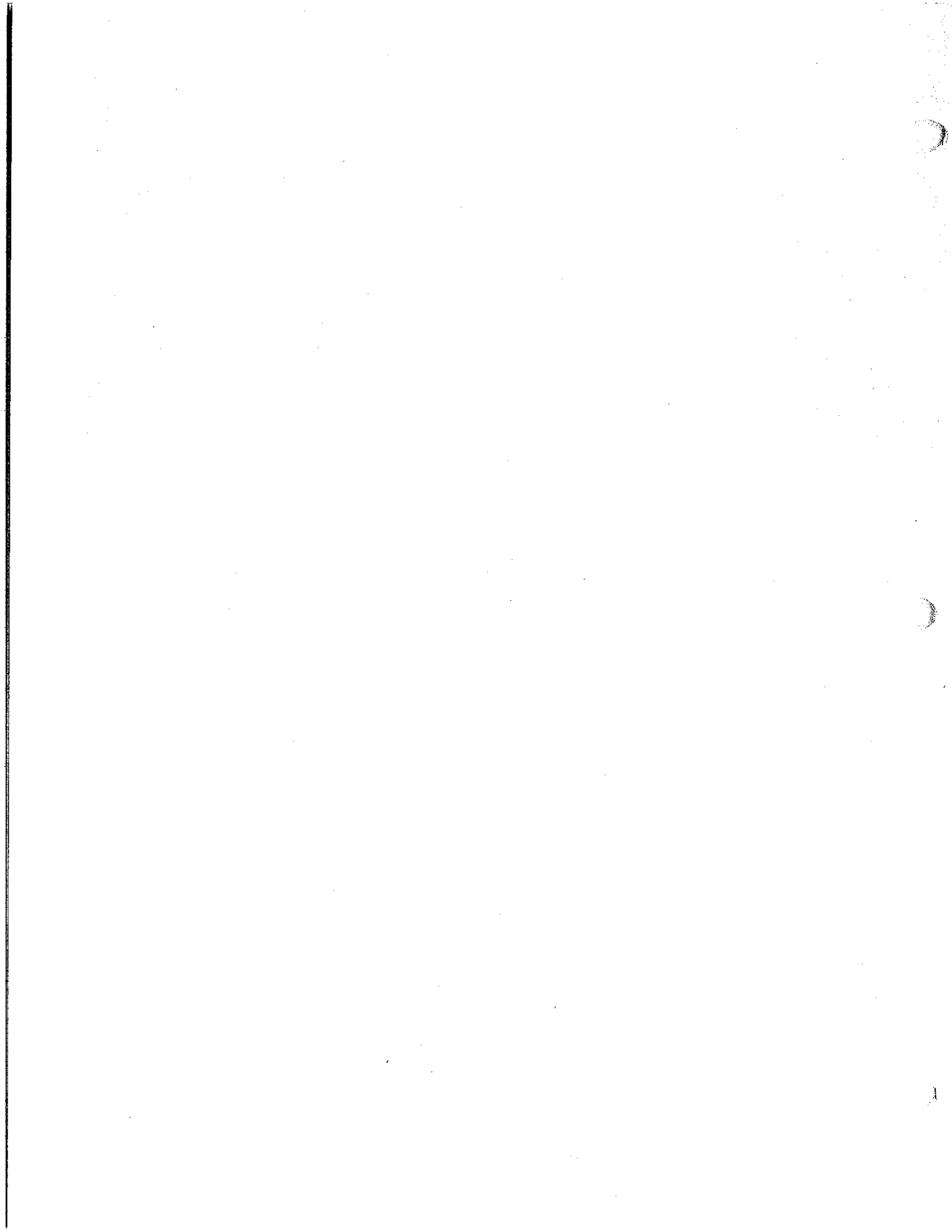
There being heard neither consent nor objection by the respondent or by the Office of Disciplinary Counsel, the Court is of opinion to and doth hereby adopt the written recommended disposition of the Lawyer Disciplinary Board. It is therefore ordered that the license to practice law in the State of West Virginia of the respondent, Donald G. Ferrell, be, and it hereby is, annulled. Chief Justice Neely and Justice Brotherton absent. Judge Fred L. Fox, II, sitting by temporary assignment.

A True Copy

Attest:



Clerk, Supreme Court of Appeals



STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 9th day of March, 1995, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 22752

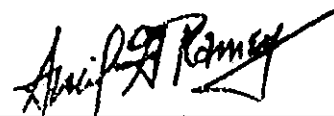
Donald G. Ferrell, a member of The
West Virginia State Bar, Respondent

On a former day, to-wit, January 23, 1995, came the the Lawyer Disciplinary Board, by Ellen F. Golden, its attorney, pursuant to Rule 3.20, Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition recommending that the respondent's, Donald G. Ferrell, a member of The West Virginia State Bar, license to practice law in the State of West Virginia, be annulled.

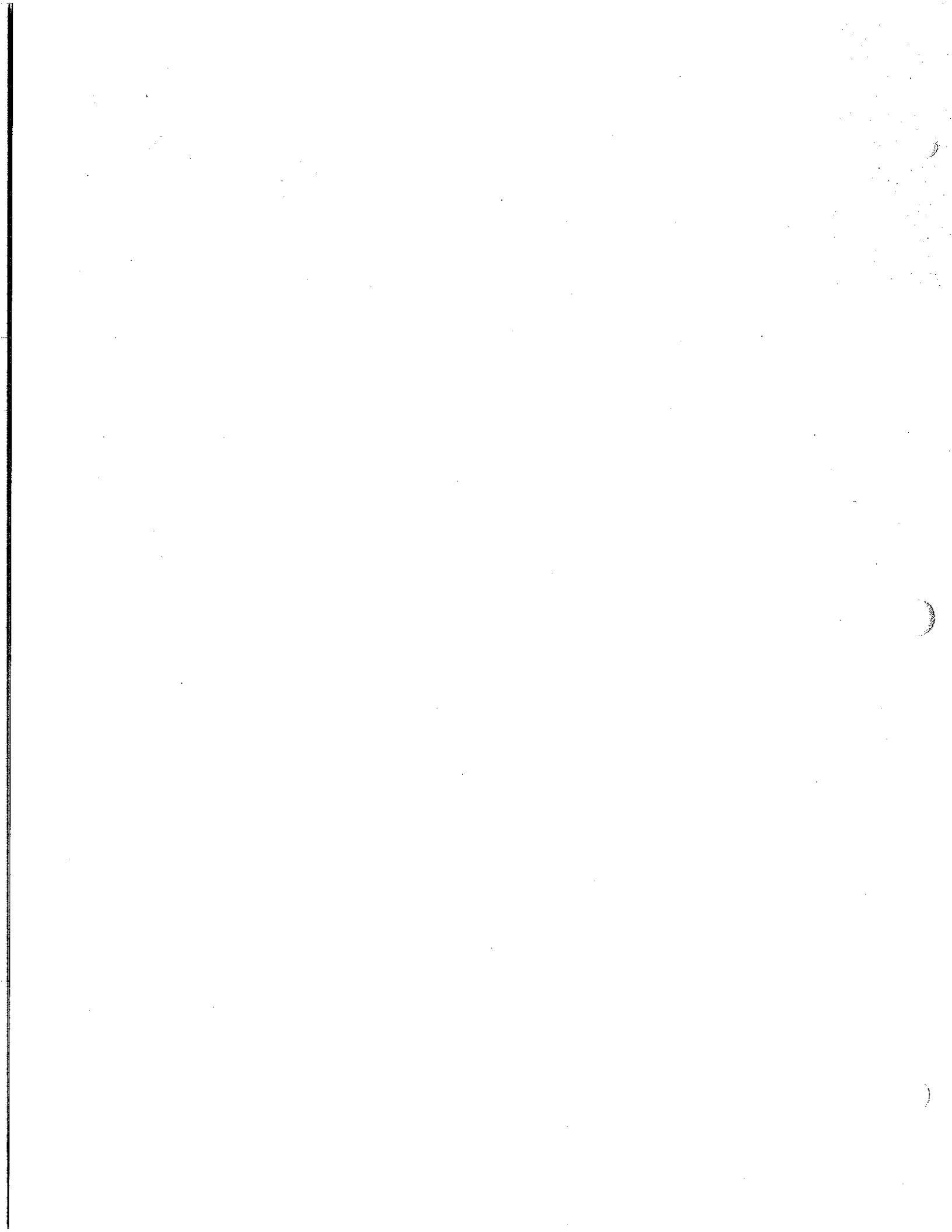
There being heard neither consent nor objection by the respondent or by the Office of Disciplinary Counsel, the Court is of opinion to and doth hereby adopt the written recommended disposition of the Lawyer Disciplinary Board. It is therefore ordered that the license to practice law in the State of West Virginia of the respondent, Donald G. Ferrell, be, and it hereby is, annulled. Chief Justice Neely and Justice Brotherton absent. Judge Fred L. Fox, II, sitting by temporary assignment.

A True Copy

Attest:

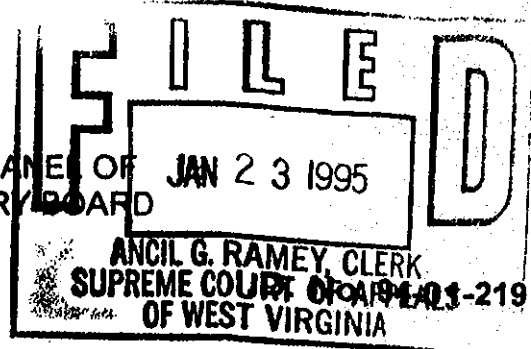


Clerk, Supreme Court of Appeals



BEFORE THE HEARING PANEL OF
THE LAWYER DISCIPLINARY BOARD

JAN 23 1995

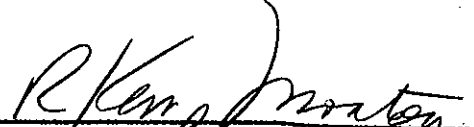


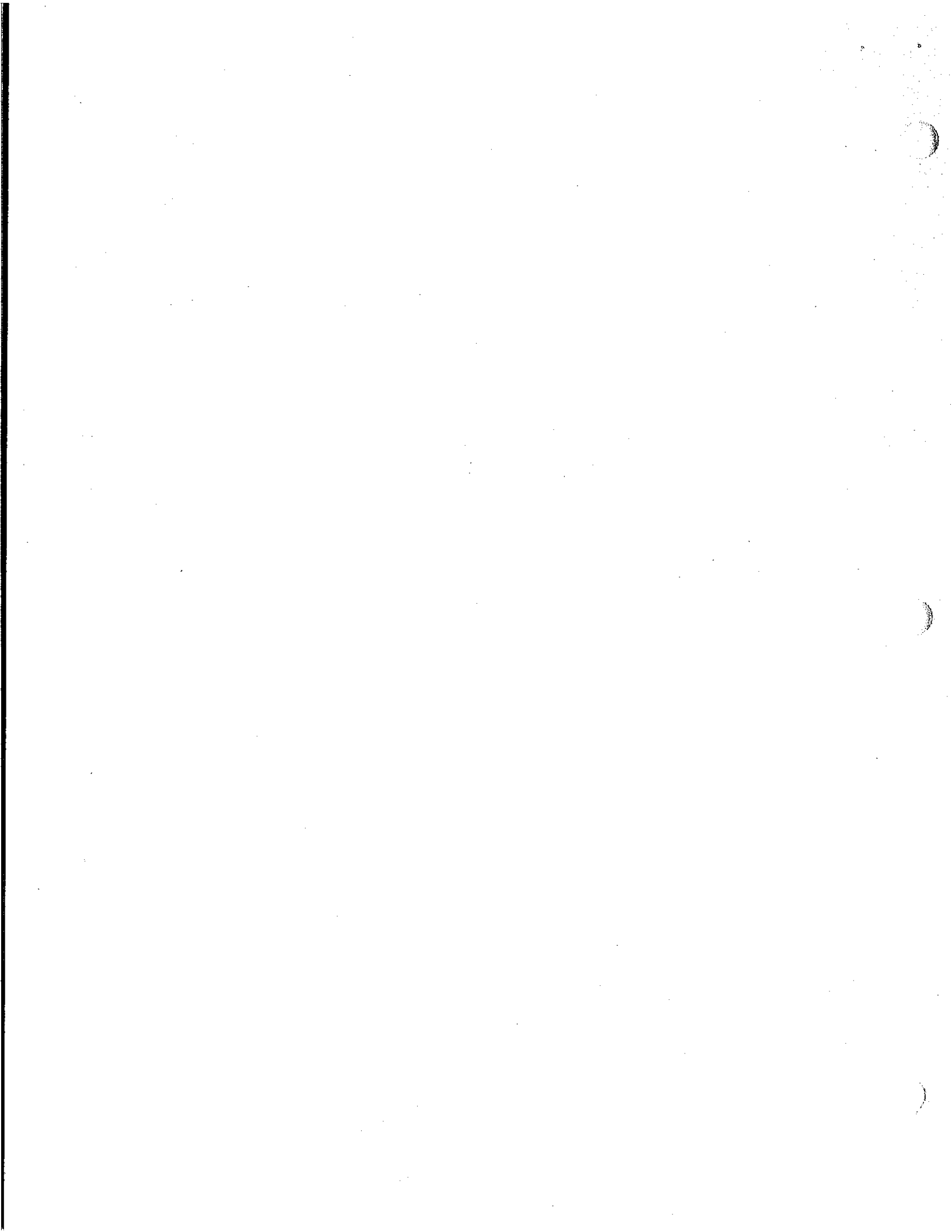
IN RE: DONALD G. FERRELL, a member of
The West Virginia State Bar

**FULL HEARING PANEL ADOPTION OF
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED DECISION**

This matter came on for deliberation by the Full Hearing Panel of the Lawyer Disciplinary Board, State of West Virginia at its November 11, 1994, meeting in Charleston, West Virginia, a quorum being present. After consideration of Disciplinary Counsel's Report, the full Hearing Panel voted 10 for, 0 against with 0 abstaining, to adopt the REPORT OF DISCIPLINE IMPOSED BY A FOREIGN JURISDICTION.

Signed this 19th day of January, 1995.


R. KEMP MORTON, CHARIMAN
Hearing Panel
Lawyer Disciplinary Board



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

**IN RE: DONALD GENE FERRELL, an active member I.D. NO. 94-01-219
of The West Virginia State Bar.**

REPORT OF DISCIPLINE IMPOSED BY A FOREIGN JURISDICTION

PROCEDURE

This matter comes before the Hearing Panel pursuant to Rule 3.20, Reciprocal Discipline, of the Rules of Lawyer Disciplinary Procedure. On May 16, 1994, the Office of Lawyer Disciplinary Counsel received an Order of the Virginia State Bar Disciplinary Board entered March 25, 1994, revoking Donald G. Ferrell's license to practice law in the Commonwealth of Virginia. (Exhibit 4 herein incorporated). At that time reciprocal discipline was governed by Article IV, § 28-A of the By-Laws of The West Virginia State Bar. (Attached as Exhibit 9). That section of the By-Laws is substantially the same as Rule 3.20 of the Rules of Lawyer Disciplinary Procedure, effective July 1, 1994. (Attached as Exhibit 10). A copy of the Order was sent to R. Kemp Morton, Esquire under cover letter dated June 13, 1994. (Exhibit 1 herein incorporated). That letter was also sent to Donald Gene Ferrell, Respondent herein. By letter dated June 14, 1994, Mr. Morton informed

Respondent of Article IV, Section 28-A, enclosing a copy of that portion of the By-Laws. (Exhibit 2 herein incorporated). Mr. Morton advised Respondent that if the Hearing Panel did not receive a response from him by July 15, 1994, the Hearing Panel would consider making a recommendation that Respondent's license to practice law in West Virginia be revoked. For reasons that are not apparent, Respondent did not receive the June 14, 1994 letter until it was faxed to him on July 27, 1994. Respondent replied by letter dated July 29, 1994. (Exhibit 3 herein incorporated). Respondent did not ask for a hearing as required by § 28-A(d) of the State Bar By-Laws or by Rule 3.20(d) of the Rules of Lawyer Disciplinary Procedure).

Attached and incorporated with this report are the following exhibits: (1) letter from Sherri D. Goodman to Mr. Morton and copied to Respondent; (2) letter from Mr. Morton to Respondent dated June 15, 1994; (3) letter from Respondent to Mr. Morton dated July 29, 1994; (4) Order of the Virginia State Bar Disciplinary Board; (5) Opinion and Order of Revocation of the Virginia State Bar Disciplinary Board; (6) Receiver's Report excluding his billing; (7) Amended Receivers Report; and (8) Order of Approval And Distribution. I have included as Exhibits 9 and 10 respectively, Article VI, § 28-A of the By-Laws and Rule 3.20 of the Rules of Lawyer Disciplinary Procedure.

FINDINGS OF FACT

1. Respondent was represented by counsel in the proceedings before the Virginia State Bar Disciplinary Board ("Virginia Board").

2. The Virginia Board found by clear and convincing evidence that Respondent violated the following disciplinary rules of the Code of Professional Conduct in the course of eleven different matters as more fully set forth in Opinion and Order of Revocation ("Opinion"), Exhibit 5 herein incorporated:

- (i) DR 1-102(A) (3) by committing a crime or other deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law;
- (ii) DR 7-101(A)(3) by prejudicing his client during the course of the professional relationship;
- (iii) DR 9-102(A) by failing to properly deposit a client's funds in an identifiable insured trust account;
- (iv) DR 9-102(B)(3) by failing to maintain complete records of all funds of a client which came into his possession;
- (v) DR 9-102(B)(4) by failing to promptly pay or deliver to a client or another, as requested, the funds of a client which is in his possession;
- (vi) DR 9-102(D) by failing to maintain client funds in one or more interest bearing accounts whenever he had established record keeping, accounting, clerical and administrative procedures, to compute and credit or pay periodically, but at least quarterly, pro rata to each client the interest on such client's funds, less fees, costs and expenses for such record keeping.
- (vii) DR 9-103(A) by failing to keep and maintain required books and records to reflect his compliance with Disciplinary Rule 9-102;
- (viii) DR 9-103(B) by failing to follow minimum trust account

procedures which are applicable to all trust accounts maintained by attorneys practicing in Virginia.

(Opinion, pp. 3-4, 5-6, 7-8, 9-10, 12, 13, 13-14, 15, 17, 18-19, 21, 23).

3. The Virginia Disciplinary Board found each matter where Respondent violated the rules listed above substantiated a revocation of the Respondent's license to practice law in the Commonwealth of Virginia. Id.

4. The Virginia Disciplinary Board found by clear and convincing evidence that Respondent violated the Virginia Code of Professional Responsibility, DR 9-102(A), by commingling his personal funds with his trust account funds and that such a violation would substantiate a revocation of Respondent's license to practice law in the Commonwealth of Virginia. (Opinion, p. 24).

5. A Receiver was appointed and received claims against Respondent for trust or escrow funds totalling \$713,518.57 as allowed by the Court. The Receiver received funds after costs totalling \$278,631.36. The Court approved and the Receiver disbursed the funds to claimants at the rate of \$0.3937 per \$1.00 claimed. (Opinion, p. 25).

6. The Virginia Board found by clear and convincing evidence that many of the losses complained of in the Virginia proceedings have not been paid by Respondent's malpractice insurance carrier. Id.

7. Respondent did not report the revocation of his license to practice law in the Commonwealth of Virginia to The West Virginia State Bar as required by Article VI, Section 28-A of the By-laws of The West Virginia State Bar or by Rule 3.20(b) of the Rules of Lawyer Disciplinary Procedure. The By-laws as well as the

Rules of Lawyer Disciplinary Procedure, Rule 3.20(b), require that any member of The West Virginia State Bar must report disciplinary action taken against him or her to lawyer disciplinary authority, in writing, within 10 days of imposition of discipline. Rule 3.20 makes the failure to notify the Office of Disciplinary Counsel an aggravating factor in any subsequent disciplinary proceeding.

CONCLUSIONS OF LAW

The final adjudication in the Commonwealth of Virginia disbaring the Respondent herein from practicing law in the Commonwealth of Virginia conclusively establishes that Respondent acted as found in the Opinion and Order of Revocation.

The Respondent herein did not notify The West Virginia State Bar nor the Office of Disciplinary Counsel of the Order before the Virginia State Bar Disciplinary Board revoking Respondent's license to practice law in the Commonwealth of Virginia.

Respondent did not request a hearing to challenge the validity of the Order of the Virginia State Bar Disciplinary Board.

The procedure followed by the Virginia State Bar Disciplinary Board comported with the requirements of due process of law.

The proof upon which the Virginia State Bar Disciplinary Board based its decision was not so infirm as to not be unacceptable as a final determination.

The revocation of Respondent's license will not result in grave injustice.

The misconduct established in the Opinion and Order of Revocation by the

Virginia State Bar Disciplinary Board warrants disbarment.

RECOMMENDED DISPOSITION

The Office of Disciplinary Counsel pursuant to Rule 3.20 of the Rules of Lawyer Disciplinary Procedure recommends that Donald G. Ferrell, Respondent herein, be disbarred for the reasons stated herein.

Respectfully submitted,



Ellen F. Golden, Lawyer Disciplinary Counsel
Office of Lawyer Disciplinary Counsel
210 Dickinson Street
Charleston, West Virginia 25301
304-558-7999