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DISCIPLINARY COUNSEL

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 26<sup>th</sup> of January 2012, the following order was made and entered:

Lawyer Disciplinary Board, Petitioner

vs.) Nos. 10-4018 and 35724

Michael A. Esposito, a member of The West  
Virginia State Bar, Respondent

On a former day, to-wit, August 25, 2011, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by David A. Jividen, its chairperson, pursuant to Rule 3.10 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition in No. 35724, recommending that: (1) the respondent's law license be suspended for two years; (2) respondent be ordered to pay restitution in the amount of five-thousand dollars (\$5,000) to Robert D. Wise and one thousand and nine hundred dollars (\$1,900) to Ronald Booth; (3) at the conclusion of the period of suspension, prior to petitioning for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure, respondent be required to undergo an independent psychiatric evaluation and comply with any additional treatment protocol needed; (4) respondent's practice of law be supervised for a one-year period after reinstatement by an attorney agreed upon between the Office of Disciplinary Counsel and respondent; (5) respondent complete, before any reinstatement, twelve hours of continuing legal education in ethics in addition to such ethics hours he is otherwise required to complete to maintain

his active license to practice law; and (6) respondent pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

On October 20, 2011, the Court deferred consideration of this matter until it received the Hearing Panel Subcommittee recommendation in LDB v. Esposito, No. 10-4018.

Thereafter, on December 13, 2011, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by David A. Jividen, its chairperson, pursuant to Rule 3.10 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition in No. 10-4018, recommending that: (1) the respondent's law license be suspended indefinitely and that respondent not be permitted to seek reinstatement for at least two years; (2) respondent be required to petition for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure; (3) prior to petitioning for reinstatement, respondent be required to undergo an independent psychiatric evaluation to determine whether he is fit to engage in the practice of law and comply with any recommended treatment protocol; (4) respondent's practice of law be supervised for a two-year period after reinstatement by an attorney agreed upon between Office of Disciplinary Counsel and respondent; (5) respondent complete, before reinstatement, twelve hours of continuing legal education in ethics in addition to such ethics hours he is otherwise required to complete to maintain his active license to practice law; and (6) respondent pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Neither consent nor objection to the said recommendation has been received.

Upon consideration of the recommendations, the Court does concur with the recommendations and considers the recommended sanctions together.

It is therefore ordered that: (1) the respondent's license to practice law in the State of West Virginia be, and it hereby is, suspended indefinitely; (2) the respondent is hereby ordered to pay restitution in the amount of five-thousand dollars (\$5,000) to Robert D. Wise and one thousand and nine hundred dollars (\$1,900) to Ronald Booth; (3) the respondent is required to petition for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure, but may not seek reinstatement for at least two years from the date of this order; (4) prior to petitioning for reinstatement, respondent is hereby ordered to undergo an independent psychiatric evaluation to determine whether he is fit to engage in the practice of law and comply with any recommended treatment protocol; (5) prior to petitioning for reinstatement, respondent is hereby ordered to complete twelve hours of continuing legal education in ethics, in addition to such ethics hours as is otherwise required to maintain an active license to practice law; (6) after any reinstatement, respondent's practice of law shall be supervised for a two-year period by an attorney agreed upon between the Office of Disciplinary Counsel and respondent; and (7) respondent is hereby ordered to pay the costs of both of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

A True Copy

Attest: /s/ Rory L. Perry II, Clerk of Court

