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JAN 20 2011

OFFICE OF
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 13th January, 2011, the following order was made and entered:

Office of Disciplinary Counsel, Petitioner

vs.) No. 35547

Richard A. Hayhurst, a member of The West Virginia State Bar, Respondent

On a former day, to-wit, April 16, 2010, came the Office of Disciplinary Counsel, by Rachael L. Fletcher Cipoletti, its attorney, pursuant to Rule 3.18 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its petition seeking the annulment of the license to practice law of the respondent, Richard A. Hayhurst, for the reasons stated therein.

Thereafter, on May 24, 2010, came the respondent, Richard A. Hayhurst, by Robert P. Martin and Robert L. McKinney, II, Bailey & Wyant, P.L.L.C., his attorneys, and presented to the Court his written response thereto.

Upon consideration whereof, the Court is of opinion to and doth hereby grant said petition. It is therefore ordered that the respondent's license to practice law in the State of West Virginia, be, and it hereby is, annulled.

Service of a copy of this order upon the respondent and the petitioner shall constitute sufficient notice of the contents herein.

A True Copy

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



NO. _____

**BEFORE THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA**

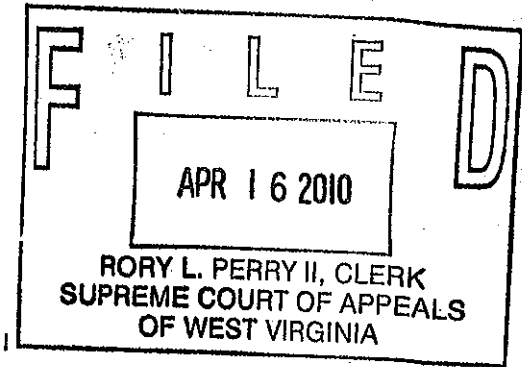
OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

v.

**RICHARD A. HAYHURST, a member
of the West Virginia State Bar,**

Respondent.



**PETITION SEEKING ANNULMENT OF RESPONDENT'S LAW LICENSE
PURSUANT TO RULE 3.18 OF THE RULES OF
LAWYER DISCIPLINARY PROCEDURE**

NOW COMES the Office of Disciplinary Counsel by Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, and reports to this Court pursuant to Rule 3.18 of the Rules of Lawyer Disciplinary Procedure that Respondent has been found guilty of felony crimes that reflect adversely on his honesty, trustworthiness, and fitness as a lawyer and are in direct violation of the Rules of Professional Conduct. In support of this petition, the Office of Disciplinary Counsel states as follows:

FACTS

1. Richard A. Hayhurst, hereinafter Respondent, is a member of the West Virginia State Bar who practices in Parkersburg, 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 June 14, 1972.
2. On or about September 24, 2009, Respondent was named in a One Count felony Information in the United States District Court for the Southern District of West Virginia, charging him with failing to account for and pay the Internal Revenue Service employment taxes totaling \$8,792.53, in violation of Title 26, United States Code, Section 7202. [Attachment A]
3. On or about November 5, 2009, Respondent entered into a plea agreement to plead guilty to the Information. [Attachment B]
4. Respondent stipulated that while engaged in the practice of law and the operation of his law firm in Parkersburg, West Virginia that in 2003 he withheld federal income and FICA taxes from four of his six employee's paychecks in the amount of \$8,792.53, but failed to pay the same to the Internal Revenue Service. Respondent filed IRS form 941 reflecting that he withheld and collected the same. Additionally, between 2000 and 2006, Respondent failed to pay taxes on behalf of the employees

of his law firm in the amount of \$216,767.00. Further, Respondent failed to pay the employer portion of his law firm's employees' Social Security and Medicare taxes from 2003 until 2006 totaling \$44,557.00. Finally, Respondent failed to pay his own personal income taxes from 2003 to 2005 totaling \$134,965.00 in unpaid tax liability.

5. On or about April 14, 2010, the United States District Court for the Southern District of West Virginia accepted Respondent's guilty plea and sentenced him to Twenty-One (21) months in the federal penitentiary. Respondent was also ordered to pay \$405,081.52, plus interest and penalties, in restitution to the Internal Revenue Service. [Attachment C].
6. Respondent was ordered by the United States District Court for the Southern District of West Virginia to surrender himself to the United States Marshal Service.
7. Respondent has pled guilty to crimes involving moral turpitude and professional unfitness within the meaning of Rule 3.18 of the Rules of Lawyer Disciplinary Procedure.¹
8. Respondent has violated Rule 8.4(b) and Rule 8.4(c) of the Rules of Professional Conduct which state in pertinent part:

1

"Where there has been a final criminal conviction, proof on the record of such conviction satisfies the Committee on Legal Ethics' burden of proving an ethical violation arising from such conviction." Syl. Pt. 2, Committee on Legal Ethics v. Six, 181 W.Va. 52, 380 S.E.2d 219 (1989).

Rule 8.4(b) Misconduct

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.

Rule 8.4(c) Misconduct

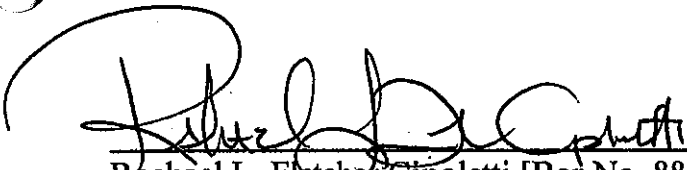
It is professional misconduct for a lawyer to:

- (c). Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

9. In addition to the instant matter, Respondent has a prior criminal and disciplinary history. On or about April 12, 1996, Respondent plead guilty to a single count information charging him with a failure to file an income tax return in violation of 26 U.S.C. § 7203 before the United States District Court for the Southern District of West Virginia.
10. On or about May 30, 1996, in addition to other sanctions, the Court suspended Respondent's law license to practice law for three months for a violation of 8.4(b) of the Rules of Professional Conduct. [Attachment D].
11. Finally, on or about September 12, 1996, the Court reprimanded Respondent for his violation of Rule 5.5(a) and Rule 8.4(d) of the Rules of Professional Conduct. [Attachment E]

WHEREFORE, the Office of Disciplinary Counsel requests that this Court issue an Order to annul Respondent's law license based on Rule 3.18 of the Rules of Lawyer Disciplinary Procedure after affording Respondent the opportunity the right to file a written request with the Chairperson of the Hearing Panel of the Lawyer Disciplinary Board for a mitigation hearing within thirty (30) days of the date of the filing of this petition.

Respectfully submitted,
Office of Disciplinary Counsel



Rachael L. Fletcher Cipoletti [Bar No. 8806]
Chief Lawyer Disciplinary Counsel
2008 Kanawha Boulevard East
Charleston, West Virginia 25311
(304) 558-7999
(304) 558-4015 facsimile

CERTIFICATE OF SERVICE

This is to certify that I, **Rachael L. Fletcher Cipoletti**, Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 16th day of April, 2010, served a true copy of the foregoing "**PETITION SEEKING ANNULMENT OF RESPONDENT'S LAW LICENSE PURSUANT TO RULE 3.18 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE**" upon Respondent Richard A. Hayhurst, Esquire, by mailing the same, United States Mail with sufficient postage, to the following address:

Richard A. Hayhurst, Esquire
Post Office Box 86
Parkersburg, West Virginia 26102



Rachael L. Fletcher Cipoletti

Attachment A

FILED

SEP 24 2009

TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West Virginia

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
PARKERSBURG

UNITED STATES OF AMERICA

v.

CRIMINAL NO.

6:09-00217
26 U.S.C. § 7202

RICHARD A. HAYHURST

I N F O R M A T I O N

The United States Attorney Charges:

1. At all relevant times, defendant RICHARD A. HAYHURST practiced law in Parkersburg, Wood County, West Virginia and operated his firm as a sole proprietorship.

2. At all relevant times, defendant RICHARD A. HAYHURST employed four individuals at his law firm.

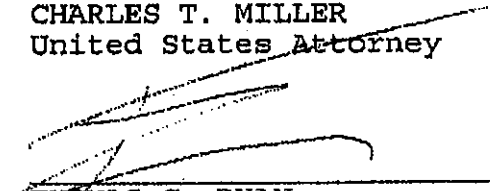
3. In or about October 2003 through January 2004, within the Southern District of West Virginia, defendant RICHARD A. HAYHURST willfully failed to truthfully account for and pay over to the Internal Revenue Service employment taxes totaling \$8,792.53, including trust fund taxes deducted and collected from the total taxable wages of his law firm employees for the fourth quarter of 2003, ending December 31, 2003.

In violation of Title 26, United States Code, Section 7202.

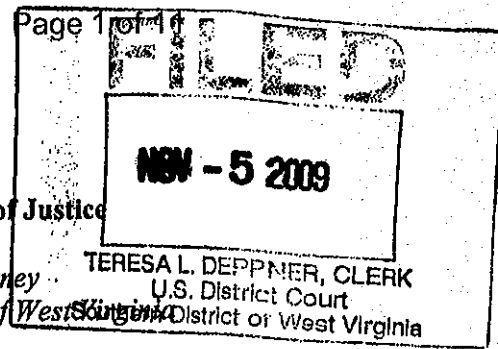
UNITED STATES OF AMERICA

CHARLES T. MILLER
United States Attorney

By:


THOMAS C. RYAN
Assistant United States Attorney

Attachment B



U.S. Department of Justice

United States Attorney
Southern District of West Virginia

TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West Virginia

United States Courthouse
300 Virginia Street East
Charleston, WV 25301
FAX: (304) 347-5104

Mailing Address
Post Office Box 1713
Charleston, WV 25326
(304) 345-2200
1-800-659-8726

June 12, 2009

Craig Kay, Esquire
Kay, Casto, & Chaney
P.O. Box 2031
Charleston, WV 25327

Re: United States v. Richard A. Hayhurst


Dear Mr. Kay:

This will confirm our conversations with regard to your client, Richard A. Hayhurst (hereinafter "Mr. Hayhurst"). As a result of these conversations, it is agreed by and between the United States and Mr. Hayhurst as follows:

1. **CHARGING AGREEMENT.** Mr. Hayhurst agrees to waive his right pursuant to Rule 7 of the Federal Rules of Criminal Procedure to be charged by indictment and will consent to the filing of a single-count information to be filed in the United States District Court for the Southern District of West Virginia, a copy of which is attached hereto as "Plea Agreement Exhibit A."

2. **RESOLUTION OF CHARGES.** Mr. Hayhurst will plead guilty to a violation of 26 U.S.C. § 7202 (failure to pay over trust fund taxes for employees) as charged in said information.

3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Mr. Hayhurst will be exposed by virtue of this guilty plea is as follows:


Defendant's
initials

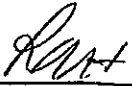
Craig Kay, Esquire
June 12, 2009
Page 2

Re: U.S. v. Richard Hayhurst

- (a) Imprisonment for a period of five years;
- (b) A fine of \$250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of three years;
- (d) A mandatory special assessment of \$100.00 pursuant to 18 U.S.C. § 3013; and,
- (e) Costs of prosecution.

4. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Mr. Hayhurst will tender a check or money order to the Clerk of the United States District Court for \$100.00, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the Clerk will be applied toward the special assessment imposed by the Court at sentencing. Mr. Hayhurst will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Mr. Hayhurst fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Mr. Hayhurst.

5. **PAYMENT OF MONETARY PENALTIES.** Mr. Hayhurst agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Mr. Hayhurst further agrees not to object to the


Defendant's
initials

Craig Kay, Esquire
June 12, 2009
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Re: U.S. v. Richard Hayhurst


District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

6. **COOPERATION.** Mr. Hayhurst will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Mr. Hayhurst may have counsel present except when appearing before a grand jury.

7. **ASSISTANCE TO INTERNAL REVENUE SERVICE.** Mr. Hayhurst agrees to cooperate with the Internal Revenue Service in the determination of his personal and business civil income tax liability for the taxable years 2000 to the present and to make available to the examining agents all books, records and other documentary evidence in his possession, custody or control, including all materials provided to the defense, through discovery or otherwise, during this proceeding by the attorneys for the government and any criminal investigators assisting them.

8. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Hayhurst, nothing contained in any statement or testimony provided by Mr. Hayhurst pursuant to this agreement, or any evidence developed therefrom, will be used against Mr. Hayhurst, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

9. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Mr. Hayhurst for any violations of federal or state laws. The United States reserves the right to prosecute him for


Defendant's
initials

Craig Kay, Esquire
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Re: U.S. v. Richard Hayhurst

perjury or false statement if such a situation should occur pursuant to this agreement.

10. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Hayhurst stipulate and agree that the facts comprising the offense of conviction and relevant conduct include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit B."

Mr. Hayhurst agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by Mr. Hayhurst, and he is subsequently tried on any of the charges in the information, the United States may use and introduce the "Stipulation of Facts" in the United States case-in-chief, in cross-examination of Mr. Hayhurst or of any of his witnesses, or in rebuttal of any testimony introduced by Mr. Hayhurst or on his behalf. Mr. Hayhurst knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Mr. Hayhurst understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.



Defendant's
initials

Craig Kay, Esquire
June 12, 2009
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Re: U.S. v. Richard Hayhurst

11. **AGREEMENT ON SENTENCING GUIDELINES.** Based on the foregoing Stipulation of Facts, the United States and Mr. Hayhurst agree that the following provisions of the United States Sentencing Guidelines apply to this case.

Count One of the Information:

USSG §4T1.1(H)

loss more than \$400,000

20

Adjusted Offense Level

20

The United States and Mr. Hayhurst acknowledge and understand that the Court and the Probation Office are not bound by the parties' calculation of the United States Sentencing Guidelines set forth above and that the parties shall not have the right to withdraw from the plea agreement due to a disagreement with the Court's calculation of the appropriate guideline range.

12. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** The parties reserve the right to appeal the District Court's determination of the adjusted offense level, prior to consideration of acceptance of responsibility, if the District Court's determination differs from that stated in paragraph eleven above. Nonetheless, Mr. Hayhurst knowingly and voluntarily waives his right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any other ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment or fine is below or within the Sentencing Guideline range corresponding to offense level 20. The United States also waives its right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any other ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment



Defendant's
initials

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June 12, 2009
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or fine is within or above the Sentencing Guideline range corresponding to offense level 17.

Mr. Hayhurst also knowingly and voluntarily waives the right to challenge his guilty plea and his conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

13. WAIVER OF FOIA AND PRIVACY RIGHT. Mr. Hayhurst knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

14. WAIVER OF STATUTES OF LIMITATIONS AND PRETRIAL DELAY. Mr. Hayhurst knowingly and voluntarily agrees that in the event (a) this agreement is voided or not accepted by the District Court, (b) he withdraws from the agreement, or (c) his conviction is vacated for any reason, then any indictment or counts this Office has agreed to dismiss at final disposition, and any prosecution of an offense or offenses that were completed as of the date defendant executes this agreement and that could be joined with such indictment or counts under Fed. R. Crim. P. 8, may be commenced or reinstated against him. Any such prosecution, however, must be commenced or reinstated not later than six months after the occurrence of one of the conditions in (a), (b) or (c) above. Mr. Hayhurst knowingly and voluntarily waives all defenses based on the applicable statutes of limitations, and pre-indictment delay under the Federal Rules of Criminal Procedure or the Constitution, with respect to any such potential future prosecution.


Defendant's
initials

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June 12, 2009
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Re: U.S. v. Richard Hayhurst

15. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);
- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Mr. Hayhurst;
- (f) Advise the Court concerning the nature and extent of Mr. Hayhurst's cooperation; and
- (g) Address the Court regarding the issue of Mr. Hayhurst's acceptance of responsibility.

16. **VOIDING OF AGREEMENT.** If either the United States or Mr. Hayhurst violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

17. **TAX DIVISION APPROVAL.** It is understood that this agreement is conditioned upon approval by the Department of Justice, Criminal Tax Division. In the event such approval is not granted, this agreement shall be void.


Defendant's
initials

Craig Kay, Esquire
June 12, 2009
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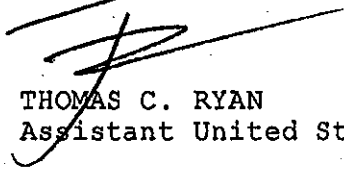
Re: U.S. v. Richard Hayhurst

18. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Mr. Hayhurst in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Mr. Hayhurst in any Court other than the United States District Court for the Southern District of West Virginia.

Acknowledged and agreed to on behalf of the United States:

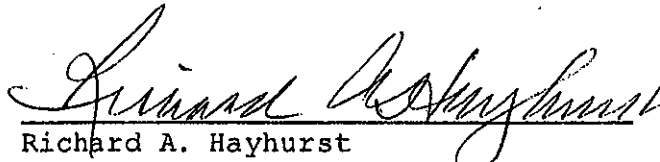
~~CHARLES T. MILLER
United States Attorney~~

By:



THOMAS C. RYAN
Assistant United States Attorney

TCR/slw

I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this nine-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.


Richard A. Hayhurst
Defendant

26 June 2009
Date Signed


Craig Kay
Counsel for Defendant

June 26, 2009
Date Signed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA

v.

CRIMINAL NO. _____

RICHARD A. HAYHURST

STIPULATION OF FACTS

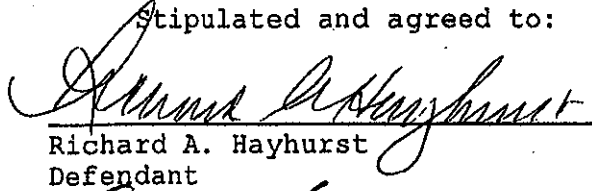
The United States and Richard Hayhurst stipulate and agree that the facts comprising the offense of conviction and relevant conduct in the Information in the Southern District of West Virginia, include the following:

In 2003, Richard Hayhurst practiced law in Parkersburg, West Virginia and operated his firm as a sole proprietorship. During the fourth quarter of 2003, that is, from October through December 2003, Hayhurst employed six individuals. During that time, Hayhurst withheld federal income and FICA taxes from his four employee's paychecks (the "trust fund taxes") in the amount of \$8,792.53, which he was obligated to pay over to the Internal Revenue Service on their behalf. Further, Hayhurst filed IRS Form 941 for the fourth quarter of 2003 reflecting that he withheld and collected the trust fund taxes. However, Hayhurst failed to pay over the trust fund taxes reflected on the Form 941.

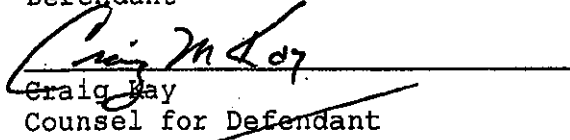
In addition to the specific act set forth above, Mr. Hayhurst also failed to pay over additional quarterly trust fund taxes on behalf of his employees from the first quarter of 2000 through the third quarter of 2006 in the amount of \$216,767. Further, Mr. Hayhurst failed to pay the employer portion of his employee's Social Security and Medicare taxes from the second quarter of 2003 through the third quarter of 2006 totaling in the amount of \$44,557. Finally, Mr. Hayhurst failed to pay his own personal income taxes for the years 2003, 2004, and 2005 totaling \$134,965 in unpaid tax liability. In total, the charged tax liability and relevant conduct attributed to Mr. Hayhurst is \$405,082.

"Plea Agreement Exhibit B"

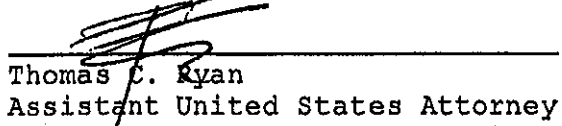
Stipulated and agreed to:


Richard A. Hayhurst
Defendant

26 June 2009
Date


Craig M. Kay
Counsel for Defendant

6/26/2009
Date


Thomas C. Ryan
Assistant United States Attorney

7/1/09
Date

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
PARKERSBURG

UNITED STATES OF AMERICA

v.

CRIMINAL NO.

26 U.S.C. § 7202

RICHARD A. HAYHURST

I N F O R M A T I O N

The United States Attorney Charges:

1. At all relevant times, defendant RICHARD A. HAYHURST practiced law in Parkersburg, Wood County, West Virginia and operated his firm as a sole proprietorship.

2. At all relevant times, defendant RICHARD A. HAYHURST employed four individuals at his law firm.

3. In or about October 2003 through January 2004, within the Southern District of West Virginia, defendant RICHARD A. HAYHURST willfully failed to truthfully account for and pay over to the Internal Revenue Service employment taxes totaling \$8,792.53, including trust fund taxes deducted and collected from the total taxable wages of his law firm employees for the fourth quarter of 2003, ending December 31, 2003.

In violation of Title 26, United States Code, Section 7202.

UNITED STATES OF AMERICA

CHARLES T. MILLER
United States Attorney

By:

THOMAS C. RYAN
Assistant United States Attorney

"Plea Agreement Exhibit A"

Attachment C

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA

Case Number: 6:09-cr-00217-1

V.

USM Number: 05119-088

Defendant's Attorney: Craig M. Kay

RICHARD A. HAYHURST

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT :

- pleaded guilty to Single Count Information.
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

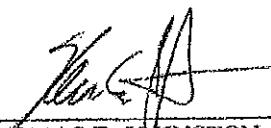
Title & Section	Nature of Offense	Offense Ended	Count
26 U.S.C. § 7202	failure to pay taxes	January, 2004	One

The defendant is sentenced as provided in pages 2 through 6 of this judgment.

- The defendant has been found not guilty on count(s) _____.
- Count(s) _____ is(are) dismissed on the motion of the United States.

It is ORDERED that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and the United States Attorney of material changes in economic circumstances.

Date of Imposition of Judgment: April 14, 2010
Date Signed: April 15, 2010



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **21 months**.

- The court **RECOMMENDS** the following to the Bureau of Prisons: **The Court recommends that the defendant be evaluated for and placed in any and all appropriate substance and/or alcohol abuse treatment programs which may be offered by the Bureau of Prisons including the 500-hour residential drug treatment program. The Court recommends that the defendant be placed at FCI Morgantown.**
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district by 1:00 p.m. on _____.
- The defendant shall surrender to the United States Marshal for this district as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons by 1:00 p.m. on _____.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered _____ to _____

a _____, with a certified copy of this judgment.

United States Marshal

By _____
Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years**.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

Check if applicable:

- The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer.
- The defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments page of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptance reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement or act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

While on supervised release, the defendant must not commit another federal, state, or local crime, must not possess a firearm or other dangerous device, and must not unlawfully possess a controlled substance. The defendant must also comply with the standard terms and conditions of supervised release as recommended by the United States Sentencing Commission and as adopted by the United States District Court for the Southern District of West Virginia, except that the defendant shall not be required to participate in a program of testing, counseling, and treatment for drug and alcohol abuse as directed by the probation officer.

SPECIAL CONDITIONS OF SUPERVISION

In addition, the defendant shall comply with the following special conditions of supervised release:

- 1) As a special condition of supervised release, the defendant shall pay restitution to the Internal Revenue Service in the amount of \$405,081.52 plus interest and penalties. Following release from incarceration, any remaining restitution balance shall be paid in monthly installments of no less than \$500 per month until paid in full, beginning 30 days after release from custody. Restitution is to be paid to the Internal Revenue Service;
- 2) The defendant shall be prohibited from incurring new credit charges or opening additional lines of credit without approval of the probation officer, and the defendant shall provide the probation officer access to any requested financial information;
- 3) The defendant shall apply all monies received from income tax refunds, lottery winnings, judgments, and/or any other anticipated or unexpected financial gains to the court-ordered financial obligations;
- 4) The defendant shall cooperate with the Internal Revenue Service to determine the total amount of taxes due, if any, and shall comply with the payment plan that will be established; and,
- 5) The defendant shall participate in a program of mental health treatment as directed by the probation officer and approved by the Court.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties as set out on the Schedule of Payments page.

	Assessment	Fine	Restitution
TOTALS:	\$100 PAID	\$0	\$0

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(I), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS:	\$	\$	

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Page 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that the interest requirement is waived for the fine.
- The court determined that the defendant does not have the ability to pay interest and it is ordered that the interest requirement is waived for the restitution.
- The court determined that the defendant does not have the ability to pay interest and it is ordered that the interest requirement for the fine is modified as follows:
- The court determined that the defendant does not have the ability to pay interest and it is ordered that the interest requirement for the restitution is modified as follows:

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- Lump sum payment of \$ _____ due immediately, balance due no later than _____.
- Lump sum payment of \$ _____ due immediately, balance due as set forth below:
- Special instructions regarding the payment of criminal monetary penalties: **The special assessment has been paid in full.**

Unless the court expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Attachment D

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 30th day of May, 1996, the following order was made and entered:

**Office of Lawyer Disciplinary
Counsel, Petitioner**

vs.) No. 23412

**Richard A. Hayhurst, a suspended
member of The West Virginia State
Bar, Respondent**

On a former day, to-wit, May 23, 1996, came the petitioner, the Office of Lawyer Disciplinary Counsel, by Sherri D. Goodman, Chief Lawyer Disciplinary Counsel, and also came the respondent, Richard A. Hayhurst, a member of The West Virginia State Bar, by Kay, Casto, Chaney, Love & Wise, John T. Kay, Jr., and Craig M. Kay, his attorneys, and presented to the Court a joint agreement stipulating to the following: (1) the respondent's license to practice law in the State of West Virginia shall be suspended for a period of three months, said suspension to become effective upon the first day of respondent's incarceration. If the respondent does not receive a sentence of incarceration, the suspension shall become effective thirty days from entry of this Court's order suspending respondent's license to practice law in the State of West Virginia; (2) the respondent shall continue the implementation of the bookkeeping and billing practices recommended by his counsel; (3) beginning on January 1, 1997, and continuing for three years, the respondent shall provide the Office of Disciplinary Counsel, by October 20th of each year, an affidavit verifying that he has met all tax filing requirements for the relevant federal, state and municipal governments, with failure to

comply resulting in a further suspension of his license to practice law in the State of West Virginia for an additional two years; and (4) respondent shall continue his current counseling for a period of one year from the date of the reinstatement of his license to practice law in the State of West Virginia.

Upon consideration whereof, the Court is of opinion to and doth hereby approve said agreement. It is therefore ordered: (1) that respondent's license to practice law in the State of West Virginia be, and it hereby is, suspended for a period of three months, said suspension to become effective upon the first day of respondent's incarceration, for violation of Rule 8.4(b) of the Rules of Professional Conduct. If the respondent does not receive a sentence of incarceration, it is further considered and ordered that said suspension shall become effective thirty days from entry of this order; (2) respondent shall continue the implementation of the bookkeeping and billing practices recommended by his counsel; (3) beginning on January 1, 1997, and continuing for three years, the respondent shall provide the Office of Disciplinary Counsel, by October 20th of each year, an affidavit verifying that he has met all tax filing requirements for the relevant federal, state and municipal governments, with failure to comply resulting in a further suspension of his license to practice law in the State of West Virginia for an additional two years; and (4) respondent shall continue his current counseling for a period of one year from the date of the reinstatement of his license to practice law in the State of West Virginia.

Service of a certified copy of this order shall constitute sufficient notice of the contents herein.

A True Copy

Attest:

Anif G. Romney

Clerk, Supreme Court of Appeals

OFFICE OF LAWYER DISCIPLINARY COUNCIL
JAN - 5 1996

**BEFORE THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

v.

**Supreme Court No. 23412
I.D. No. 96-02-133**

**RICHARD A. HAYHURST, a member
of The West Virginia State Bar,**

Respondent.

STIPULATION OF THE PARTIES

The parties in this disciplinary proceeding, the Office of Disciplinary Counsel, by Sherri D. Goodman, and Respondent Richard A. Hayhurst, personally and by counsel, John T. Kay, Jr. and Craig M. Kay, enter into the following stipulations of fact, law and recommendation concerning discipline:

FINDINGS OF FACT

1. Richard A. Hayhurst ("Respondent" herein) is a lawyer practicing in Parkersburg, Wood County, West Virginia, and, as such, is subject to the disciplinary jurisdiction of the Supreme Court of Appeal of West Virginia and its properly constituted Lawyer Disciplinary Board. Respondent was admitted to The West Virginia State Bar on June 14, 1972.

2. On April 12, 1996, Respondent entered a guilty plea to a single-count information charging him with the failure to file an income tax return for the year 1991 in violation of 26 U.S.C.

§ 7203 before the United States District Court for the Southern District of West Virginia. A copy of the Order accepting the guilty plea, the information and the plea agreement are attached hereto.

3. Respondent also did not timely file federal income tax returns for the years 1989, 1990 and 1992 or timely pay said taxes; did not timely file state income tax returns for the years 1989 through 1992 or timely pay said taxes; and did not timely file Parkersburg B&O tax returns or timely pay said taxes.

4. Respondent has paid to the State of West Virginia the income tax due for the years 1989 through 1992 and has timely filed his federal income tax return for the year 1994 and paid the amount due thereon. Respondent has obtained an automatic extension to file his 1995 federal and state income tax returns and has paid a substantial amount of his estimated 1995 federal income tax liability. Respondent will file his 1995 federal income tax return on or before the due date and will pay the balance due thereon in full. Respondent is making arrangements with the Internal Revenue Service, the State of West Virginia and the City of Parkersburg to pay the amounts owed as soon as he is in a financial position to do so.

5. As an aggravating factor, Respondent acknowledges that in re: Richard A. Hayhurst, I.D. No. 96-02-053, he, Respondent violated Rules 5.5(a) and 8.4(d) of the Rules of Professional Conduct by signing the name of attorney M. Catherine McKay, who was at that time admitted to practice in Ohio, without her

specific permission in order to comply with Ohio Rules for Admission to Practice.

6. As a mitigating factor, Respondent is seeking medical, psychiatric and counseling assistance to address his emotional and physical health problems, which problems have contributed to his failure to file the various returns in issue. Respondent has agreed to continue with the prescribed treatment and counseling of his physicians and counselors so that the physical and emotional problems can be dealt with and be eliminated.

CONCLUSIONS OF LAW

7. Respondent acknowledges that he violated Rule 8.4(b) of the Rules of Professional Conduct which prohibits a lawyer from committing a criminal act that adversely reflects on his honesty, trustworthiness or fitness as a lawyer in other respects. See Committee on Legal Ethics v. Goode, No. 20226 (W.Va. 7/24/91); Committee on Legal Ethics v. Dues, No. 21424 (W.Va. 12/11/92).

RECOMMENDATION CONCERNING DISCIPLINE

8. The parties stipulate that a fair and proportional sanction for his violation of Rule 8.4(b) of the Rules of Professional Conduct is the following:

(a) Respondent's law license will be suspended for three months. If Respondent receives a sentence of incarceration from the United States District Court, the suspension will begin on the first day of his incarceration. If Respondent does not receive a sentence of incarceration, the suspension will begin thirty days following the Supreme Court's Order adopting this recommendation.

(b) Respondent agrees to continue the implementation of the bookkeeping and billing practices recommended by his counsel.


(c) For three years beginning in 1997, Respondent will provide the Office of Disciplinary Counsel by October 20 of each year an affidavit verifying that he has met all tax filing requirements for the United States, the State of West Virginia and the City of Parkersburg. Should Respondent provide false information in said affidavit, he will be in violation of Rule 8.1(a) of the Rules of Professional Conduct. Upon proof by the Office of Disciplinary Counsel that Respondent has violated Rule 8.1(a), Respondent agrees that his law license will be suspended for a period of two years.

(d) Respondent agrees to continue the current counseling he is receiving for a period of one year from the date of the reinstatement of his law license.


9. It is the understanding of the parties that if the Supreme Court rejects this recommended sanction, Respondent still possesses the opportunity to request a mitigation hearing pursuant to Rule 3.18(e) of the Rules of Lawyer Disciplinary Procedure.

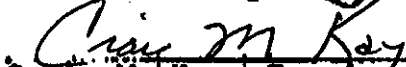
OFFICE OF DISCIPLINARY COUNSEL

By Counsel


Sherri D. Goodman
Chief Lawyer Disciplinary Counsel
210 Dickinson Street
Charleston, West Virginia 25301
(304) 558-7999
(304) 558-0381 (FAX)

RICHARD A. HAYHURST


Richard A. Hayhurst


Craig M. Kay, Esquire
Kay, Casto, Chaney, Love & Wise
P. O. Box 2031
Charleston, West Virginia 25327
(304) 345-8900
(304) 345-8909 (FAX)

Attachment E

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 12th day of September, 1996, the following order was made and entered:

**Lawyer Disciplinary Board,
Complainant**

vs.) No. 23413

**Richard A. Hayhurst, a member of The
West Virginia State Bar, Respondent**

On a former day, to-wit, August 2, 1996, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Cheryl L. Henderson, its chairperson, pursuant to Rule 3.10, Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition in the above-captioned proceeding recommending that respondent (1) receive a public reprimand; (2) write a letter of apology to Judge Ed Lane, Washington County Court of Common Pleas, Marietta, Ohio; (3) comply with the State of Ohio's Rules for the Admission to Practice Law; and (4) reimburse M. Catherine McKay for travel and work-related expenses incurred while she was his employee. Thereafter, on the same day came the Lawyer Disciplinary Board, by Sherri D. Goodman, Chief Disciplinary Counsel, pursuant to Rule 3.11, Rules of Lawyer Disciplinary Procedure, and presented to the Court its written consent thereto.

Upon consideration whereof and there being heard neither objection nor consent from the respondent, 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 respondent (1) be, and he hereby is, publicly reprimanded; (2) shall write a letter of apology to Judge Ed Lane, Washington County Court

of Common Pleas, Marietta, Ohio; (3) shall henceforth comply with the State of Ohio's Rules for the Admission to Practice Law; and (4) shall reimburse M. Catherine McKay for travel and work-related expenses incurred while she was his employee.

Service of a copy of this order upon all parties hereto shall constitute sufficient notice of the contents herein.

A True Copy

Attest:



Clerk, Supreme Court of Appeals

OFFICE OF LAWYER DISCIPLINARY COUNSEL

SEP 24 1996

RECEIVED

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

IN RE: RICHARD A. HAYHURST, a member
of The West Virginia State Bar

**I.D. Nos. 96-02-053
Sup. Ct. No. 23413**

**REPORT OF THE
SUBCOMMITTEE**

On May 21 1996, the parties in this disciplinary proceeding, the Office of Disciplinary Counsel, by Sherri D. Goodman, and Respondent Richard A. Hayhurst, personally and by counsel, Craig M. Kay, entered into stipulations of fact, law and recommended discipline. The "Stipulations of the Parties" was submitted to the Hearing Panel Subcommittee on May 22, 1996. On July 10, 1996, the Subcommittee members, Cheryl L. Henderson, Esquire, Chairperson, David J. Romano, Esquire and Sister Mona Farthing, considered the stipulations and deliberated by telephone. The Subcommittee determined that the stipulations were fair and acceptable, and it deemed them adopted by the Hearing Panel. The Subcommittee therefore makes the following findings:

1. Richard A. Hayhurst ("Respondent" herein) is a lawyer practicing in Parkersburg, Wood 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 June 14, 1972.
2. On April 5, 1995, Respondent filed a pleading entitled "Answer and Third Party Complaint with Jury Demand Endorsed" with the Court of Common Pleas of Washington County, Ohio, in the case of *Criss v. Haddix*, Case No. 95-OT-37. The complaint initiating the civil action in *Criss v. Haddix* had been filed on March 7, 1995. The Honorable Edward Lane presided over this civil action.
3. Respondent was not licensed to practice law in Ohio and was required under the Ohio Rules for Admission to Practice to have a member of the Ohio Bar appear as co-counsel.

4. Respondent signed the name of M. Catherine McKay on said Answer and Third Party Complaint without first notifying or receiving her specific permission to do so. Ms. McKay had previously been an associate in Respondent's firm and was licensed in Ohio.

5. The third-part defendant filed a motion to strike the Third Party Complaint on the grounds that Ms. McKay had not authorized her signature. Ms. McKay executed an affidavit to that effect.

6. Respondent filed a motion to withdraw as counsel on the grounds that Ms. McKay "has made an affidavit the thrust of which is that she does not desire to be or remain counsel or record for these parties herein."

7. The Court struck the Answer and Third Party Complaint as a sham and assessed court costs against Respondent. The Court permitted the defendants' new counsel to file proper pleadings.

8. Prior to Ms. McKay leaving Mr. Hayhurst's employment, Respondent and she had a discussion concerning the circumstances under which Ms. McKay would act as local counsel for Respondent in matters pending in the State of Ohio. Respondent and Ms. McKay did not have a clear meeting of the minds with regard to the specific circumstances under which Ms. McKay would agree to associate with Respondent as local counsel in Ohio cases.

9. Respondent acknowledges that he showed poor judgment in signing Ms. McKay's name to the *Haddix* Answer and Third-Party Complaint without her prior specific consent.

10. Respondent acknowledges that he was previously cautioned by Judge Edward Lane to comply with Ohio's rules. On February 1, 1991, Respondent filed a motion to dismiss, answer and counterclaim before the Marietta Municipal Court of Washington County, Ohio in *Bartmess v. Haynes*, Case No. 90 CVF 1265, without having the signature of an attorney licensed in Ohio. The Court ordered all pleadings filed by Respondent to be stricken, in part, because he was not licensed to practice law in Ohio.

CONCLUSIONS OF LAW

11. The Subcommittee accepts Respondent's acknowledgment and so finds that he violated Rule 5.5(a) of the Rules of Professional Conduct which provides:

A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

12. The Subcommittee accepts Respondent's acknowledgment and so finds that he also violated Rule 8.4(d) of the Rules of Professional Conduct by engaging in conduct prejudicial to the administration of justice.

13. As another aggravating factor, on April 12, 1996, Respondent entered a guilty plea to a single-count information charging him with the failure to file an income tax return for the year 1991 in violation of 26 U.S.C. § 7203 before the United States District Court for the Southern District of West Virginia. Respondent also did not timely file federal income tax returns for the years 1989, 1990 and 1992 or timely pay said taxes; did not timely file state income tax returns for the years 1989 through 1992 or timely pay said taxes; and did not timely file Parkersburg B&O tax returns or timely pay said taxes. The Supreme Court, by Order entered May 29, 1996, suspended Respondent's law license for a period of three months and imposed other sanctions with respect to that matter. See I.D. No. 96-02-133, Supreme Court No. 23412.

RECOMMENDATION CONCERNING DISCIPLINE

14. The Subcommittee accepts the parties' agreement that a fair sanction for the above ethical misconduct is as follows:

(a) Respondent will receive a public reprimand by the Supreme Court of Appeals of West Virginia;

(b) Respondent will write a letter of apology to the Honorable Ed Lane, Washington County Court of Common Pleas, Court House, Marietta, Ohio 45750;

(c) Respondent agrees that in the future he will never make an appearance in an Ohio court without first fully complying with Ohio's Rules for Admission to Practice;

(d) Respondent acknowledges that he owes certain amounts for travel and work-related expenses incurred by Ms. McKay while she was employed by him. Respondent and Ms. McKay have agreed that Respondent will pay Ms. McKay the amounts due to her in this regard when the funds for said expenses have been received by him from the client.

15. It is the understanding of the parties and the Hearing Panel that should the Hearing Panel or the Supreme Court decline to accept the stipulations as to the recommended sanction, that

Respondent has not waived his procedural rights to file an answer to the Statements of Charges and to participate in a hearing before the Hearing Panel Subcommittee.

C Cheryl L. Henderson Date: 7/30/96
Cheryl L. Henderson, Esquire, Chairperson

David J. Romano Date: 7/29/96
David J. Romano Esquire

Sister Mona Farthing, S.S.F. Date: 7-17-96
Sister Mona Farthing

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

IN RE: **RICHARD A. HAYHURST**, a member
 of The West Virginia State Bar

**I.D. NOS. 96-02-053
96-02-133**

STATEMENT OF CHARGES

YOU ARE HEREBY notified that a Hearing Panel Subcommittee of the Lawyer Disciplinary Board will hold a hearing pursuant to Rules 3.3 through 3.16 of the Rules of Disciplinary Procedure, upon the following charges against you:

1. Richard A. Hayhurst ("Respondent" herein) is a lawyer practicing in Parkersburg, Wood 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 June 14, 1972.
2. On April 5, 1995, Respondent filed a pleading entitled "Answer and Third Party Complaint with Jury Demand Endorsed" with the Court of Common Pleas of Washington County, Ohio in the case of *Criss v. Haddix*, Case No. 95-OT-37. The complaint initiating the civil action in *Criss v. Haddix* had been filed on March 7, 1995.
3. Respondent was not licensed to practice law in Ohio and was required to have a member of the Ohio Bar appear as co-counsel.
4. Respondent signed the name of M. Catherine McKay on said Answer without notifying her first and without receiving her specific permission to do so. Ms. McKay was an associate in Respondent's firm until June 15, 1994 and was licensed in Ohio.
5. The third-part defendant filed a motion to strike the Third Party Complaint on the grounds that Ms. McKay had not authorized her signature. Respondent filed a motion to withdraw as counsel. The Court struck the Answer and Third Party Complaint as a sham and assessed court costs against Respondent. The Court permitted the defendants' new counsel to file proper pleadings.

6. As an aggravating factor and as evidence of lack of mistake, on February 1, 1991, Respondent filed a motion to dismiss, answer and counterclaim before the Marietta Municipal Court of Washington County, Ohio in *Bartmess v. Haynes*, Case No. 90 CVF 1265, without having the signature of an attorney licensed in Ohio. The Court ordered all pleadings filed by Respondent to be stricken, in part, because he was not licensed to practice law in Ohio.

7. Respondent violated Rule 5.5(a) of the Rules of Professional Conduct which provides:

A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

8. Respondent also violated Rule 8.4(d) of the Rules of Professional Conduct by engaging in conduct prejudicial to the administration of justice.


9. As another aggravating factor, on April 12, 1996, Respondent entered a guilty plea to a single-count information charging him with the failure to file an income tax return for the year 1991 in violation of 26 U.S.C. § 7203 before the United States District Court for the Southern District of West Virginia. Upon information and belief, Respondent also did not timely file federal income tax returns for the years 1989, 1990 and 1992 or timely pay said taxes; did not timely file state income tax returns for the years 1989 through 1992 or timely pay said taxes; and did not timely file Parkersburg B&O tax returns or timely pay said taxes. Said conduct violates Rules 8.4(b) of the Rules of Professional Conduct which prohibits a lawyer from engaging in conduct adversely reflecting on his honesty, trustworthiness or fitness to practice law in other respects.

* * *

Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with the above-cited violations of the Rules of Professional Conduct and has issued this Statement of Charges. As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 30 days of service of this Statement of Charges by

the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

Dated this 6th day of May, 1996.



Stephen G. Jory, Chairperson
Investigative Panel of the
Lawyer Disciplinary Board