

OCT 22 1997

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 16th day of October, 1997, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 23638

William G. Mercer, an active member of  
The West Virginia State Bar, Respondent

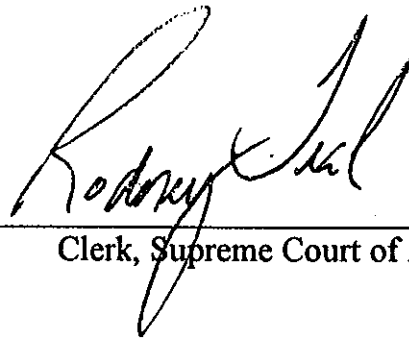
On a former day, to-wit, July 30, 1997, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by David J. Romano, its chairperson, pursuant to Rule 3.10, Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition in the above-captioned matter recommending that the respondent, William G. Mercer, an active member of The West Virginia State Bar, (1) be publicly reprimanded; (2) be required to practice law under the supervision of an attorney approved by the Office of Disciplinary Counsel for a period of twelve months, said supervising attorney to report quarterly to the Office of Disciplinary Counsel on respondent's progress; and (3) be required to implement, within two months of this order or within two months of the review of his office practices by the supervising attorney, whichever is sooner, systems within his office for tracking all pleadings, deadlines and telephone messages.

Upon consideration whereof, the Court is of opinion to and doth hereby adopt the recommendations of the Hearing Panel Subcommittee of the Lawyer Disciplinary Board. It is therefore ordered that the respondent, William G. Mercer, an active member of The West Virginia State Bar, be, and he hereby is, publicly reprimanded. It is further ordered that the respondent practice law under the supervision of an attorney approved by

the Office of Disciplinary Counsel for a period of twelve months, said supervising attorney to report quarterly to the Office of Disciplinary Counsel on respondent's progress. It is finally ordered that the respondent implement systems within his office for tracking all pleadings, deadlines and telephone messages within two months of this order or within two months of the review of his office systems by the supervising attorney, whichever is sooner.

A True Copy

Attest:

  
Clerk, Supreme Court of Appeals

# FILE COPY

## BEFORE THE LAWYER DISCIPLINARY BOARD STATE OF WEST VIRGINIA

In re: *William G. Mercer*, a member of  
The West Virginia State Bar

FILED  
JUL 30 1997  
ANCIL G. RAMEY, CLERK  
SUPREME COURT OF APPEALS  
I.D. No. 95-0137 VIRGINIA  
Sup. Ct. 23628

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### HEARING PANEL SUBCOMMITTEE REPORT

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The Hearing Panel Subcommittee, having reviewed the Stipulated Findings of Fact, Conclusions of Law, and Recommended Discipline of the parties in this matter, does find them to be acceptable and hereby adopts the same, as follows:

#### FINDINGS OF FACT

1. William G. Mercer (hereinafter "Respondent") is a licensed member of the West Virginia State Bar who practices in Elizabeth, Wirt County, West Virginia, and 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 May 18, 1976.
2. Respondent represented Michael J. Sokolosky, the defendant in a divorce case which commenced in 1991.
3. At a pretrial conference held August 24, 1993, Mr. Sokolosky, through Respondent, agreed to amend his answer so the divorce could be granted on the grounds of irreconcilable differences.

4. Respondent remembers that as he and Mr. Sokolosky left the August 24, 1993 hearing, Respondent informed Mr. Sokolosky that he would be sending him the amended answer for his signature and further informed Mr. Sokolosky that his final bill in the matter was a few hundred dollars.

5. Respondent asserts that shortly after the hearing he forwarded the amended answer to Mr. Sokolosky, along with a bill.

6. Respondent's secretary, Andrea Farrell, remembers sending a document to Mr. Sokolosky in late 1994. She believes that the document she sent was an amended answer.

7. Mr. Sokolosky has no memory of receiving the amended answer.

8. Respondent has not produced a copy of this amended answer in these disciplinary proceedings. Respondent asserts that he did not retain a copy of the amended answer because the original needed to be verified by Sokolosky and copies would have been made after the verified answer was received.

9. Thereafter, Respondent took no action to obtain Mr. Sokolosky's signature on an amended answer. Respondent would testify that he is sure that he placed telephone calls to Mr. Sokolosky, however he has no memory of speaking with him. However, Mr. Sokolosky would testify that he did not receive these calls.

10. At the final hearing on October 28, 1993, Law Master Fantasia reminded counsel that an amended answer had to be filed before she would sign a recommended order.

11. On August 12, 1994, Law Master Fantasia issued a letter opinion to Respondent and to opposing counsel, Robert W. Friend, Esq., requesting that Mr. Friend prepare a recommended order for her signature. One of the requirements that she expressed in this letter was that she would

not sign the recommended order until the Respondent, on behalf of his client, filed an amended answer.

12. By order entered December 14, 1994, the Family Law Master required the recommended order be submitted or counsel appear with an explanation for the delay.

13. On January 4, 1995, Robert Friend sent a letter to Respondent reminding Respondent that Law Master Fantasia would not sign a recommended order until the amended answer was filed. Friend requested that the Respondent give this matter his immediate attention.

14. On January 5, 1995, Law Master Fantasia entered an Order directing the parties to appear before the Circuit Court Judge to explain why the final recommended order had not been prepared so that the case could be resolved.

15. On January 7, 1995, Robert Friend forwarded to the Respondent the proposed recommended order, entitled "Findings of Fact and Conclusions of Law." Friend again urged the Respondent to file the amended answer, noting the impending hearing before the Circuit Court.

16. Respondent never filed an amended answer.

17. Beginning in August 1993 and throughout the proceedings, Law Master Fantasia held that it was necessary for Respondent to file an amended answer on Mr. Sokolosky's behalf. However, in January of 1995, the Circuit Court ruled that this would not be necessary. Because the Circuit Court did not put this ruling in writing, as was desired by the Law Master, opposing counsel Friend then scheduled an additional final hearing in order to prove the grounds for divorce as living separate and apart for more than one year.

18. This additional hearing was noticed to Respondent on March 31, 1995, and was scheduled for April 24, 1995, before Law Master Fantasia. Respondent did not appear at the April

24, 1995 hearing, and the hearing was continued until May 4, 1995. The new hearing date was noticed to Respondent on April 24, 1995. Respondent did not appear at the May 4, 1995 hearing either, but opposing counsel Friend proceeded to present evidence that the Sokolosky's had lived separate and apart for more than one year.

19. On May 23, 1995, the Family Law Master entered an order entitled "Amended Findings of Fact and Conclusions of Law." The order sets forth the Respondent's failure to file the Amended Answer and his failure to appear at hearings. The order found that Respondent should personally pay some of opposing counsel's attorney's fees.

20. The final decree was entered by the Circuit Court on August 2, 1995, upon opposing counsel Friend's motion without Respondent's signature. The Respondent was ordered to personally pay some of opposing counsel's attorney's fees.

21. During 1994, the Family Law Master's assistant, Sherry Sutton, received several calls from Mr. Sokolosky inquiring as to the status of his divorce. Mr. Sokolosky expressed that he wanted to remarry and needed a final divorce. Mr. Sokolosky told Ms. Sutton that he had called the Respondent several times and had received no response. Ms. Sutton called Respondent's office and spoke with a secretary about the filing of the amended answer.

22. Mr. Sokolosky asserts that he made numerous calls to Respondent, but was unable to reach him, and the calls were not returned.

23. Respondent asserts that he sent an amended answer to Mr. Sokolosky for his signature in late 1993, but that Mr. Sokolosky failed to return the document. Respondent admits that he did not contact Mr. Sokolosky to request that the amended answer be returned, and did not send an additional copy. Disciplinary Counsel notes that Mr. Sokolosky would testify that he has no

recollection of ever receiving a copy of an amended answer, and would testify that he does not understand the necessity of the amended answer.

24. Respondent did not inform Mr. Sokolosky that the final divorce had been entered. Mr. Sokolosky obtained a copy of the judgment order from opposing counsel through his ex-wife.

25. Respondent did not contact Mr. Sokolosky to explain the terms of the final divorce decree.

26. Rule 2.5 of the Rules of Lawyer Disciplinary Procedure requires that a responding lawyer's response to an initial ethics complaint shall be verified. On November 10, 1995 Respondent responded to the initial complaint without providing a verification. Former Disciplinary Counsel requested this verification by telephone on November 14, 1995 and by letters dated April 8, 1996 and May 30, 1996. Respondent provided the verification on June 7, 1996.

27. On April 8, 1996, former Disciplinary Counsel requested that Respondent provide a copy of the final divorce judgment. Respondent provided this document to former Disciplinary Counsel on June 7, 1996. Former Disciplinary Counsel did not request, and Respondent did not provide, a copy of the Law Master's proposed findings and conclusions of law.

### **CONCLUSIONS OF LAW**

28. By failing to file an amended answer and by failing to appear at hearings, despite repeated promptings, and by failing to follow-up with his client concerning the client's verification of the amended answer, Respondent violated Rule 1.3 and Rule 3.2 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 3.2. Expediting litigation.**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

29. By failing to communicate with his client and by failing to inform his client of the entry of the final divorce order, Respondent violated Rule 1.4(a) of the Rules of Professional Conduct which states:

**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.

30. As former Disciplinary Counsel did not specifically request that the Respondent provide her with a copy of the Law Master's proposed findings, Disciplinary Counsel requests that the allegations of violations of Rules 8.1(a) and 8.1(b), as contained in paragraph 20 of the Statement of Charges, be dismissed.

**AGGRAVATING AND MITIGATING FACTORS**

31. As a mitigating factor, Respondent has willingly admitted his omissions, and has voluntarily entered into this agreement with the goal of improving his practice. That he is no longer the Prosecuting Attorney of Wirt County and now has only one (as opposed to three) law offices, Respondent will be able to accomplish this goal.

32. As an aggravating factor, Respondent was admonished by the Investigative Panel in April 1995 for exhibiting a lack of diligence in 1991 resulting from a failure to return a client's



telephone calls. See, Complaint of Evelyn B. Burd against William G. Mercer, I.D. No. 92-01-337, closed April 8, 1995.

33. As a mitigating factor, Respondent accepted Mr. Sokolosky's case as a favor to Mr. Sokolosky's grandmother, and Respondent did not charge for all of his time. Respondent asserts that Mr. Sokolosky still owes Respondent some attorney's fees. Disciplinary Counsel notes that Respondent has not produced any bills, time sheets, or other documentation to this effect.

34. As a further mitigating factor, all of this matter happened around the time of Respondent's father's final illness and death which illness and death caused Respondent to suffer from severe depression.

35. As a further mitigating factor, during this period of time, Respondent was also faced with other family pressures which he has disclosed to Disciplinary Counsel.

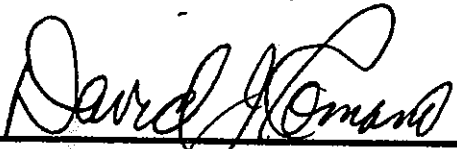
#### **RECOMMENDED DISCIPLINE**

36. Respondent shall be issued a public reprimand, shall institute office procedures as outlined in paragraph 37 below, shall practice law under the supervision of a supervising attorney for a period of twelve (12) months as outlined in paragraph 38 below, and shall pay all costs of these proceedings.

37. Counsel for Respondent, Michael C. Allen, shall perform a review of the Respondent's office practices and shall suggest improvements. At the minimum, Respondent shall implement a tickler system, a calendaring system, and a log or other device for tracking telephone calls received and returned. All pleadings, deadlines, and telephone messages shall be entered onto these systems. Both Respondent and his secretary, and anyone else working in the office, shall utilize these systems and keep them up-to-date. Respondent shall implement these systems within two (2) months of

when the order by the Supreme Court becomes final, or within two (2) months of the review by Mr. Allen, whichever is sooner. Disciplinary Counsel shall be informed in writing as to what systems have been implemented and shall be given a description of each. These systems shall be open and available for review by Disciplinary Counsel.

38. Respondent shall practice law under the direct supervision of an attorney for a period of twelve (12) months, beginning on the date the Supreme Court's order in this matter becomes final. The supervising attorney shall be an attorney in good standing who is licensed within this state. The supervising attorney must be approved by the Office of Disciplinary Counsel. <sup>1</sup>The supervising attorney shall submit a quarterly report to the Office of Disciplinary Counsel on the progress of the Respondent, including but not limited to the Respondent's progress in implementing office practices and communicating with clients.

  
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David J. Romano, Esquire  
Chairperson of the  
Hearing Panel Subcommittee

Date: 7/28/97

  
\_\_\_\_\_  
Ann E. Snyder, Esquire

Date: 7/22/97

  
\_\_\_\_\_  
Mrs. Priscilla Haden

Date: 7/19/97

<sup>1</sup> If the Office of Disciplinary Counsel and the Respondent are unable to agree on who the supervisor shall be, this issue shall be submitted to the Hearing Panel Subcommittee for decision.