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STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 24th day of April, 1997, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 23710

Steven L. Miller, a member of The West
Virginia State Bar, Respondent

On a former day, to-wit, April 17, 1997, 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 an agreement stipulated to by the parties wherein (1) the respondent, Steven L. Miller, a member of The West Virginia State Bar, be admonished for violating DR 6-101(A)(3), Code of Professional Responsibility; (2) respondent file a motion in the Chapter 13 Bankruptcy Court to (a) create a priority class for clients who are unsecured creditors of which Irene McCallister would be the only known member, and (b) acknowledge a debt to Ms. McCallister in the amount of \$9,097.28; (3) should the Bankruptcy Court deny respondent's motion, the Office of Disciplinary Counsel will move to have the debt under the promissory note held to be nondischargeable under the bankruptcy laws; and (4) upon denial of the motion by Bankruptcy Court and failure of respondent to resume payment on the promissory note at conclusion of Chapter 13 Bankruptcy proceedings, the Office of Disciplinary Counsel shall move to reopen this disciplinary matter to litigate allegations of violations of Rules 8.4(c) and 8.4(d), Rules of Professional Conduct. Respondent shall not raise any defense of laches, estoppel or statute of limitations for the time period between the dismissal of this

disciplinary action and the respondent's failure to resume installment payments on the promissory note. Thereafter, on the same day came the Office of Disciplinary Counsel, by Sherri D. Goodman, Chief Lawyer Disciplinary Counsel, and presented its written concurrence therewith.

Upon consideration whereof, the Court doth hereby approve the stipulated agreement. It is therefore ordered that (1) the respondent, Steven L. Miller, a member of The West Virginia State Bar, be, and he hereby is, admonished for violating DR 6-101(A)(3), Code of Professional Responsibility; (2) respondent shall file a motion in Chapter 13 Bankruptcy Court to (a) create a priority class for clients who are unsecured creditors of which Irene McCallister would be the only known member, and (b) acknowledge a debt to Ms. McCallister in the amount of \$9,097.28; (3) should the Bankruptcy Court deny respondent's motion, the Office of Disciplinary Counsel shall move to have the debt under the promissory note held to be nondischargeable under the bankruptcy laws; and (4) upon denial of the motion by Bankruptcy Court and failure of respondent to resume payment on the promissory note at conclusion of Chapter 13 Bankruptcy proceedings, the Office of Disciplinary Counsel shall move to reopen this disciplinary matter to litigate allegations of violations of Rules 8.4(c) and 8.4(d), Rules of Professional Conduct. Respondent shall not raise any defense of laches, estoppel or statute of limitations for the time period between the dismissal of this disciplinary action and the respondent's failure to resume installment payments on the promissory note.

Service of an attested copy of this order upon all parties shall constitute sufficient notice of the contents.

A True Copy

Attest:

Carmen Bowling
Interim Clerk, Supreme Court of Appeals

6. Respondent filed for Chapter 13 bankruptcy relief on December 15, 1993, and his legal corporation filed for Chapter 11 bankruptcy relief on March 2, 1994. Respondent and his former wife had previously filed for Chapter 7 bankruptcy relief in 1987.

7. On October 24, 1994, Respondent wrote to the Office of Disciplinary Counsel that "since both I and the legal corporation are in reorganization rather than liquidation it is likely that she will be paid in full as soon as plans of reorganization are confirmed."

8. On a motion from the Office of the United States Bankruptcy Trustee, the Chapter 11 proceeding was dismissed for Respondent's failure to provide financial information. Respondent made no effort after this dismissal to make further payments to the McCallisters.

9. To date, a reorganization plan has not yet been confirmed in the Chapter 13 proceeding for Respondent individually.¹ The Trustee appointed in the Chapter 13 case has had to file at least three motions to discharge the bankruptcy petition for Respondent's failure to make monthly payments required by the Court. Respondent has exhibited a pattern of waiting until the motion to dismiss is filed before paying the Trustee the arrearages.

CONCLUSIONS OF LAW

Respondent's failure to file a civil action on the McCallisters' behalf by November 20, 1988 violated DR6-101(a)(3) which provides:

6-101.

A lawyer shall not neglect a legal matter entrusted to him.

Respondent's failure to live up to the terms of his settlement agreement on the McCallisters' malpractice claim, under these circumstances, violates Rule 8.4(c) of the Rules of Professional Conduct, which provides:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * *

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

¹Chapter 13 proceedings do not require the debtor to make financial disclosures.

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

**RE: STEVEN L. MILLER, a member of
The West Virginia State Bar**

I.D. NO.: 94-02-354

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:

STATEMENT OF FACTS

1. Steven L. Miller is a lawyer practicing in Cross Lanes, Kanawha 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 24, 1971.

2. Irene McCallister and James McCallister hired Respondent on April 23, 1987, to represent them with respect to Mrs. McCallister's automobile accident which occurred on November 20, 1986.


3. Respondent let the statute of limitations run on the McCallisters' claims without filing a civil action or otherwise preserving their cause of action.

4. The McCallisters obtained separate counsel, who negotiated an agreement whereby Respondent and his corporation would pay the McCallisters \$10,000.00. Respondent was to pay \$2,000.00 at the signing of the agreement, and make monthly payments of \$210.02 commencing on May 15, 1991.

5. Respondent only made sporadic payments: June of 1991, November of 1991, May of 1992 and September of 1992. Respondent paid a total of \$3,360.32, which includes the first payment of \$2,000.00 in that amount.

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 a violation 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 19th day of September, 1996.


Paul Friedberg, Chairperson
Investigative Panel
Lawyer Disciplinary Board

BEFORE THE LAWYER DISCIPLINARY BOARD

**RE: STEVEN L. MILLER, a member of
The West Virginia State Bar**

**I.D. NO.: 94-02-354
SUP. CT. NO.: 23710**

HEARING PANEL SUBCOMMITTEE REPORT

On January 24, 1997, a hearing was convened in the disciplinary proceeding of Steven L. Miller, I.D. No. 94-02-354. Present were Subcommittee Members Cheryl Henderson, Chairperson, R. Kemp Morton, Esquire and Mrs. Priscilla Haden. Also present were the Respondent, his counsel, Tom Truman, and the Office of Disciplinary Counsel, by Sherri D. Goodman.

The parties orally presented the Hearing Panel Subcommittee with stipulations of fact, law and recommended discipline. The Subcommittee directed the parties to reduce these stipulations to writing in this Hearing Panel Subcommittee Report.

The stipulated facts are as follows:

1. Irene and James McCallister retained Respondent on April 23, 1987 to represent them on a personal injury claim arising from a vehicular accident which Mrs. McCallister suffered on November 20, 1986. A copy of the retainer agreement was introduced as Exhibit 1.

2. Respondent did not file a civil action and the two-year statute of limitations expired. Respondent stated that a paralegal had failed to enter this deadline in the computer, although she had claimed to have entered all cases for which she was responsible.

3. Respondent advised the McCallisters that they had a claim of malpractice against him and that they should seek counsel. They retained attorney Terry M. Jordan to represent them. Respondent was also represented by counsel.

4. The parties negotiated a settlement of \$12,000, to be paid in the following manner: Respondent would pay a lump sum of \$2,000 and pay the remaining \$10,000 in monthly installments. A copy of the release reflecting the \$12,000 settlement was introduced as Exhibit 2.

5. Respondent executed a promissory note as President of Steven L. Miller & Associates, L.C. to the McCallisters for the \$10,000 indebtedness at 9 1/2% interest on April 15, 1991. Respondent has stated that he intended to sign the promissory note in his individual capacity, too. This note called for 60 equal payments of \$210.02 beginning on May 15, 1991. The note provided that each monthly installment should be applied to the interest due and the balance, if any, to the principal. A copy of the promissory note was introduced as Exhibit 3.

6. An amortization schedule prepared by the Office of Disciplinary Counsel in accordance with the terms of the promissory note showed that had Respondent paid \$210.02 each month, he would have completed his payments in April of 1996. He would have paid

) \$10,000 in principal and \$2,603.30 in interest. The amortization schedule was introduced as Exhibit 4.

7. The schedule of payments Respondent actually made was introduced as Exhibit 5. Respondent's payments were never timely, but he paid consistently through the November, 1991 payment. From February, 1992 to May, 1993, Respondent made four payments covering a total of nineteen months. His last payment covered the June, 1993 installment. He paid a total of \$5,465.52 on the promissory note. A copy of the front and back of almost all of the checks, produced from Respondent's records, was introduced as Exhibit 9. A copy of the fronts of some of Respondent's checks and the fronts and backs of checks written by Terry Jordon, after deducting his attorney's fee, were introduced as Exhibit 8.

8. A payment schedule was prepared by the Office of Disciplinary Counsel which showed, beginning in December, 1991, how much Respondent owed each month, when considering accrued interest, and how Respondent's subsequent late payments were applied to interest and balance. As of December, 1996, Respondent owed the McCallisters \$6,668.96 in principal and \$2,428.32 in interest, for a total of \$9,097.28. A copy of this payment schedule was introduced as Exhibit 6.¹

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There was initially a question whether Respondent made an additional \$500 payment to the McCallisters in August, 1996. This question was resolved by the date of the hearing in the negative, because the check had never been negotiated. Therefore, an alternative payment schedule marked as Exhibit 7, which factored in this payment, was not introduced into evidence.

9. On December 15, 1993, Respondent filed an individual Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the Southern District of West Virginia. A copy of the docket sheet from that proceeding was introduced as Exhibit 10. The McCallisters were not listed as creditors in Respondent's petition. The petition was introduced into evidence as Exhibit 11. Respondent stated that this was an oversight.

10. The Chapter 13 Plan for adjustment of debts filed by Respondent on February 9, 1994 proposed that non-priority general unsecured claims be paid pro rata at 5% of such claims. See Exhibit 12, which was introduced into evidence.

11. On March 2, 1994, Respondent's legal corporation filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Southern District of West Virginia. A copy of the docket sheet was introduced as Exhibit 24.

12. Respondent, who prepared the petition on behalf of the legal corporation, did not list the McCallisters as creditors of the legal corporation.² Respondent stated that this was an oversight. This bankruptcy case was dismissed on February 13, 1995.

13. Respondent filed an Amendment of Schedules in the Chapter 13 bankruptcy case on December 26, 1996 listing Irene McCallister as an unsecured creditor in the amount of \$5,719.74. Ms. McCallister did not receive notice of this Amendment, because Respondent sent it to an old address. However, Respondent also sent a copy to the McCallister's former attorney on the malpractice matter. Respondent stated that he did not

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The legal corporation which filed for bankruptcy, Miller & Reed, L.C. was the successor corporation to Steven L. Miller & Associates, L.C. and was responsible for its debts.

realize that Ms. McCallister was still not listed as a creditor until the Office of Disciplinary Counsel brought it to his attention.

The stipulations of law are as follows:

14. Respondent acknowledges that he violated DR 6-101(A)(3) of the Code of Professional Responsibility, in effect until 1989, which provided: "A lawyer shall not neglect a legal matter entrusted to him."

15. Respondent has also been charged in the Amended Statement of Charges with violation of Rules 8.4(c) and (d) of the Rules of Professional Conduct for his failure to complete payments to the McCallisters under the promissory note in settlement of a malpractice claim. These rules provide:

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct prejudicial to the administration of justice. . . .

Respondent does not acknowledge that he violated either of these disciplinary rules. The parties have agreed to litigate these issues only if complete restitution is not made to the McCallisters, as set forth below.

16. This disciplinary proceeding will be dismissed without prejudice, subject to being reopened as set forth below.

The parties have stipulated to the following sanctions:

17. Respondent will receive an admonishment pursuant to Rule 3.15(6) of the Rules of Lawyer Disciplinary Procedure.

18. Respondent will file a motion in the Chapter 13 bankruptcy proceeding (a) to create a priority class for clients who are unsecured creditors, of which Irene McCallister would be the only known member; and (b) for payment to Ms. McCallister prior to confirmation of a Chapter 13 plan of 100% of the money owed them up to the date Respondent filed his Amendment of Schedule on December 26, 1996, which amount is \$9,097.28.

19. Should the Bankruptcy Court deny the motion, the Office of Disciplinary Counsel will move, on behalf of Irene McCallister, to have the debt under the promissory note held to be nondischargable under the bankruptcy laws. Respondent agrees to stipulate to the nondischargability for the limited purpose of resolving this disciplinary matter. Said stipulation or a finding of nondischargability shall not be used as evidence of fraud or other wrongdoing in any proceeding.

20. If the Bankruptcy Court denies the motion set forth in paragraph 17, and Respondent fails to resume payments on the promissory note at the conclusion of the Chapter 13 bankruptcy proceedings, the Office of Disciplinary Counsel will move to reopen this disciplinary matter to litigate the allegation of violation of Rules 8.4(c) and 8.4(d) of the Rules of Professional Conduct. Respondent agrees he will not raise any defense of laches, estoppel or statute of limitations for the time period between the dismissal of this disciplinary action and Respondent's failure to resume installment payments on the promissory note or to otherwise make the McCallisters whole.

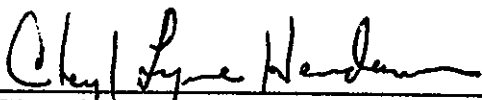
21. Respondent represents to the Hearing Panel that he has already made changes in his docketing system to avoid missing litigation deadlines. He is also undertaking a reorganization of his law practice to reduce overhead costs in order to avoid future financial difficulties which prevented him from living up to his financial obligations to the McCallisters.

The Hearing Panel Subcommittee, having duly considered these stipulations which were presented by the parties on January 24, 1997, does hereby adopt these stipulations as to fact, law and recommended sanction. The sanction for a single instance of neglect is something less severe than a suspension of the Respondent's law license. *See Lawyer Disciplinary Board v. Beveridge*, 459 S.E.2d 542 (W. Va. 1995)(admonishment, plus supervised practice); *Lawyer Disciplinary Board v. Krivonyak*, No. 22871 (W. Va. 12/13/95)(public reprimand); *Committee on Legal Ethics v. Lupton*, No. 21769 (W. Va. 6/23/93)(public reprimand and peer review). Therefore, the sanction of an admonishment is appropriate.


Moreover, the Supreme Court has encouraged the Hearing Panel to place greater emphasis on remedial measures rather than punitive measures. *Lawyer Disciplinary Board v. Cunningham*, 464 S.E.2d 181, 189 (W. Va. 1995). Restitution, a permissible sanction under Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, will attempt to make the Complainants whole.

Finally, the Subcommittee hopes that the changes in Respondent's law practice, which he has agreed to make, will remedy the situation.

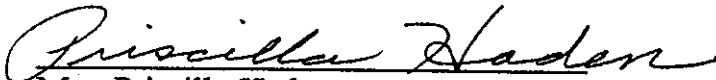
Pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure, the Hearing Panel or the Court shall order the lawyer to reimburse the Lawyer Disciplinary Board for the costs of the disciplinary proceeding unless the Panel or the Court finds the reimbursement will pose an undue hardship on the lawyer. This Subcommittee finds, in light of Respondent's demonstrated financial difficulties, that Respondent's resources should go towards paying the McCallisters rather than the Board.


Cheryl Henderson, Chairperson

Dated:

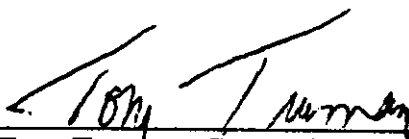

R. Kemp Morton, Esquire

Dated:

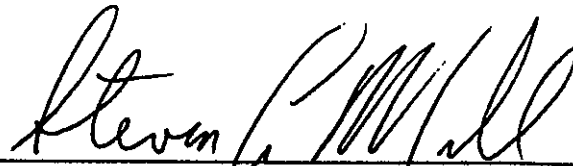

Mrs. Priscilla Haden

Dated:

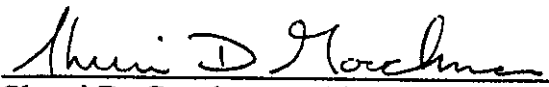
Stipulations reviewed and agreed to:


Tom Truman, Counsel for Respondent

Dated:


Steven L. Miller, Respondent

Dated:


Sherri D. Goodman, Chief Lawyer
Disciplinary Counsel

Dated: 2/7/97