

STATE OF WEST VIRGINIA

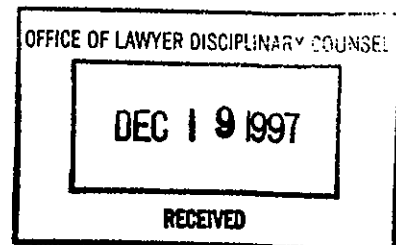
At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 11th day of December, 1997, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 23945

Stephen D. Paesani, a member of The West
Virginia State Bar, Respondent

On a former day, to-wit, December 3, 1997, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Cheryl L. Henderson, its chairperson, and presented to the Court its written recommended disposition recommending approval of the stipulated agreement between the Lawyer Disciplinary Board and the respondent, Stephen D. Paesani, wherein the parties agree to (1) a public reprimand of the respondent; (2) the performance of 100 hours of community service and pro bono legal services in furtherance of the restoration and funding of the Kimball War Memorial in Kimball, West Virginia, which shall be recorded and reported quarterly in statement form to the Office of Disciplinary Counsel, and, in the event the Kimball Memorial project requires less than 100 hours of legal assistance, the respondent agrees to undertake and complete meaningful pro bono cases referred from the West Virginia Legal Services Plan or the Judicare Project to satisfy the 100 hours of community service; and (3) respondent shall reimburse the Lawyer Disciplinary Board for all costs and expenses incurred in the investigation of this matter, for

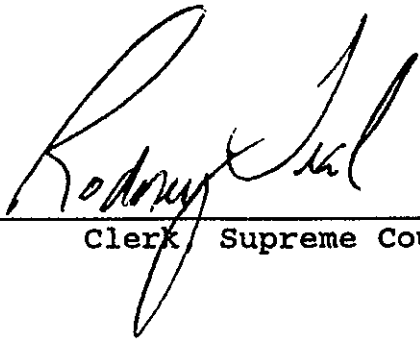


violation of Rules 1.3 and 3.2 of the West Virginia Rules of Professional Conduct.

There being heard neither concurrence nor objection from the Office of Lawyer Disciplinary Counsel, the Court doth hereby approve the aforesaid stipulated agreement. It is therefore ordered that the respondent, Stephen D. Paesani be, and he hereby is, publicly reprimanded. It is further ordered that the respondent perform 100 hours of community service and pro bono legal services in furtherance of the restoration and funding of the Kimball War Memorial in Kimball, West Virginia, which shall be recorded and reported quarterly in statement form to the Office of Disciplinary Counsel, and, in the event the Kimball Memorial project requires less than 100 hours of legal assistance, the respondent shall undertake and complete meaningful pro bono cases referred from the West Virginia Legal Services Plan or the Judicare Project to satisfy the 100 hours of community service, and finally, respondent shall reimburse the Lawyer Disciplinary Board for all costs and expenses incurred in the investigation of this matter.

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

A True Copy


Clerk, Supreme Court of Appeals

FILED

BEFORE THE LAWYER DISCIPLINARY BOARD
OF THE STATE OF WEST VIRGINIA

DEC - 3 1997

In re: STEPHEN D. PAESANI, an active member
of The West Virginia State Bar

CLERK OF THE SUPREME COURT
I.D. No. 96-03-230
Supreme Court No. 23945

STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED DISCIPLINE

STIPULATED FINDINGS OF FACT

1. Stephen D. Paesani ("Respondent" herein) is a licensed member of The West Virginia State Bar who practices in Princeton, Mercer 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 November 6, 1991.

2. While employed as an Associate at the Princeton, West Virginia, law firm of Gibson and McFadden, Respondent was directed, on June 28, 1993, by the firm's senior and managing attorney to handle the preparation for and discovery deposition of Otis Ward, the Plaintiff in a Federal Employer's Liability Act civil action styled *Otis Ward v. CSX Transportation, Inc.*, Civil Action No. 92-C-325-B, which was to be taken later that day; this assignment represented Respondent's first involvement in Mr. Ward's case.

3. Plaintiff Otis Ward had contracted with the firm of Gibson and McFadden for legal services relative to the aforesaid claim which arose from Mr. Ward's diagnosis of end-stage Chronic Obstructive Pulmonary Disease (COPD) and his claim that he contracted that illness during the course of his employment with CSX as a railroad trackman, a position from which he had retired.

4. Respondent familiarized himself with the case, prepared Mr. Ward, who was then in ill health, for the discovery deposition, and appeared on his behalf.

5. A common defense in actions such as Mr. Ward's is the plea of a bar to the claim by reason of the statute of limitations and Respondent specifically discussed that issue with Mr. Ward prior to his deposition to prepare him to respond appropriately, yet truthfully, to anticipated questions designed to establish the date upon which Mr. Ward knew or reasonably should have known of his injury and its cause, which is the operable date upon which the three-year statute of limitations applicable to FELA claims commences to run.

6. As expected, inquiries were made to Mr. Ward on deposition which resulted in certain admissions by Mr. Ward relative to the operative date of the commencement of the statute of limitations on his claim, and arguably established the operative date as occurring in 1982 or, at least as early 1987. The Complaint in Mr. Ward's case was filed in 1992.

7. Soon after Mr. Ward's discovery deposition was taken, the defendant moved for summary judgment, asserting that Mr. Ward's medical records and his deposition testimony established that the statute of limitations on his claim

commenced to run, at the latest, in 1987, and since the Complaint was not filed until 1992, his claims were time barred.

8. The Motion for Summary Judgment, filed on or about July 26, 1993, was accompanied by a "Notice of Motion" setting a hearing for August 20, 1993, and, although Respondent received and reviewed the documents, he did not take cognizance of the hearing date which resulted in his failure to appear at said hearing; the date for hearing had not been cleared with his office by opposing counsel, and although he reviewed the documents filed, he was advised by the paralegal handling the matter that no date had been set for hearing on the motion.

9. The office of Gibson and McFadden was organized such that all matters pertaining to FELA claims, including notices, motions, and scheduling were directed to and handled by a certain paralegal; after the paralegal advised the senior managing attorney of the motion on Mr. Ward's case, said attorney directed that the motion be assigned to Respondent for further handling.

10. On August 23, 1993, the Circuit Court of Raleigh County, Judge Robert Burnside entered an Order granting the motion for summary judgment and dismissing the case.

11. After learning of the dismissal, respondent made a number of unsuccessful attempts to contact Mr. Ward by telephone and later wrote him a letter advising him of the dismissal of his case.

12. On October 14, 1993, Respondent met with Mr. Ward's daughter, Ms. Lilly M. Gill, in his office, indicated his intention to file a motion for relief from the Order

granting Summary Judgment, and advised Ms. Gill that an affidavit from Mr. Ward would be required to support a contemplated assertion that Mr. Ward was "confused" during his deposition on the critical issue of the timeliness of his claim.

13. Due to his deteriorating health and consequent hospitalization, Mr. Ward was unable to execute an affidavit, and, although Respondent delayed filing the motion for relief from the Order in the hope that Mr. Ward's condition would improve sufficiently to permit execution of an affidavit, on January 7, 1994, Mr. Ward died.

14. On or about April 27, 1994, respondent filed a W.V.R.Civ.P. 60(b) motion for relief from the Order granting summary judgment, supported with affidavits from family members and his own affidavit, as well as other exhibits, but the motion was denied on June 29, 1994, because the court found that although the motion had been filed within eight months of the order granting summary judgment, under the circumstances, it had not been made within a "reasonable time" due to Plaintiff Ward's death and the consequent inability of counsel for the defense to obtain an autopsy. The Court additionally found that the motion for summary judgment had been granted "on its merits" and not "by default."

15. Ms. Gill was advised of the denial of the Rule 60(b) motion, she timely filed a disciplinary complaint on June 8, 1995, and formal charges were initiated by the filing of a Statement of Charges dated January 9, 1997. Respondent timely filed a verified Answer.

16. On March 15, 1994, Respondent left the firm of Gibson and McFadden and opened an office as a solo practitioner and, prior to the filing of the disciplinary complaint of moment, voluntarily and at his own initiative implemented procedures in his office to minimize the possibility of recurrence of a failure to take cognizance of hearing dates, which has been fully effective.

STIPULATED CONCLUSIONS OF LAW AND RECOMMENDED DISCIPLINE

1. By failing to attend a hearing set with proper notice to him, which resulted in the dismissal of his client's case, the Respondent violated Rule 1.3 of the West Virginia Rules of Professional Conduct.

Rule 1.3 states:

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

2. By delaying the filing of the Motion for Relief from the Summary Judgment under Rule 60(b) beyond a reasonable time, the Respondent violated Rule 3.2 of the West Virginia Rules of Professional Conduct.

Rule 3.2 states:

Rule 3.2. Expediting Litigation.

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

3. The Respondent shall receive a public reprimand from the Supreme Court of Appeals of West Virginia.

4. The Respondent shall perform 100 hours of community service and *pro bono* legal services in furtherance of the restoration and funding of the Kimball War Memorial in Kimball, West Virginia, which shall be recorded and reported quarterly in statement form forwarded to the office of Disciplinary Counsel. In the event that the Kimball Memorial Project requires less than 100 hours of legal assistance, the Respondent agrees to undertake and complete meaningful *pro bono* cases referred from the West Virginia Legal Services Plan or the Judicare Project to satisfy the 100 hours of community service.

OTHER TERMS AND CONDITIONS

1. Respondent shall pay all costs associated with the investigation and litigation of this proceeding by a reasonable payment schedule agreed upon by both parties.

2. This stipulation is made in lieu of hearing on the Statement of Charges in the above-captioned matter provided the stipulation and disciplinary disposition are accepted by the Subcommittee Hearing Panel. Both Disciplinary Counsel and Respondent recognize that the Subcommittee Hearing Panel has the authority to reject the Stipulated Findings of Fact, Conclusions of Law and Recommended Discipline. In the event of such rejection, Respondent shall have the opportunity to a hearing de novo, unless the rejection of the stipulation results in a recommendation of discipline less than the amount stipulated.

3. The foregoing stipulation constitutes the full stipulation entered into by the parties and if rejected by the Hearing Panel Subcommittee shall be of no force and effect. The parties acknowledge that the Supreme Court of Appeals of West Virginia is not obligated to accept either the stipulation of facts or conclusions of law and may adjudicate the matter as seems proper to the Court, subject only to the Respondent's right to seek rehearing and argument.

* * *

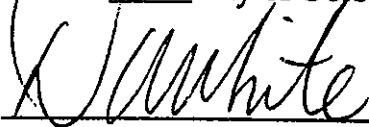
The agreement of the parties to this stipulation is evidenced by the signatures of Counsel and Respondent affixed below.

Signed for the Office of Disciplinary Counsel, by Steven Johnston Knopp, on this the 9th day of October, 1997.



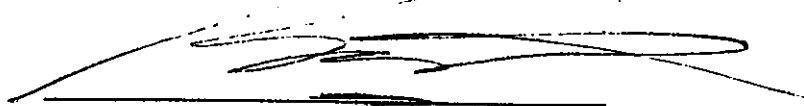
STEVEN JOHNSTON KNOPP
Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
1710 Huntington Bank Building
900 Lee Street East
Charleston, WV 25301

Signed by counsel for Respondent, David L. White, Esquire
on this 16th day of October, 1997.



David L. White, Esquire
Counsel for Respondent
Masters & Taylor, L.C.
Fourth Floor - Peoples Building
179 Summers Street
Charleston, WV 25301-2177

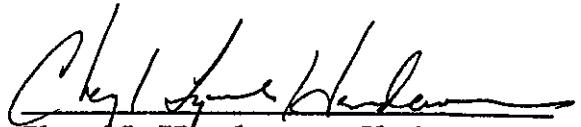
Signed by Respondent, Stephen D. Paesani,
Esquire, on this 7th day of October, 1997.



Stephen D. Paesani, Esquire
1407 East Main Street
Princeton, WV 24740

RECOMMENDED SANCTION

The Hearing Panel Subcommittee of the Lawyer Disciplinary Board recommends to the Supreme Court of Appeals of West Virginia that the STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED DISCIPLINE be adopted as written.


Cheryl L. Henderson - Chairperson
711 1/2 Fifth Avenue
Huntington, WV 25701
Hearing Panel Subcommittee
Lawyer Disciplinary Board
Date 11/14/97

Ms. Vivian Baumgardner
P.O. Box 1158
Bluefield, WV 24701
Hearing Panel Subcommittee
Lawyer Disciplinary Board
Date _____

C. Blaine Myers, Esquire
P.O. Box 1472
Parkersburg, WV 26101
Hearing Panel Subcommittee
Lawyer Disciplinary Board
Date _____

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Hearing Panel Subcommittee
Lawyer Disciplinary Board
Date _____

Vivian Baumgardner
Ms. Vivian Baumgardner
P.O. Box 1158
Bluefield, WV 24701
Hearing Panel Subcommittee
Lawyer Disciplinary Board
Date 10/15/97

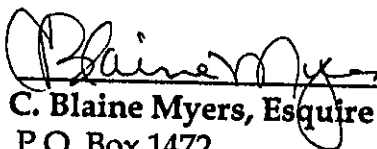
C. Blaine Myers, Esquire
P.O. Box 1472
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Hearing Panel Subcommittee
Lawyer Disciplinary Board
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Lawyer Disciplinary Board
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Bluefield, WV 24701
Hearing Panel Subcommittee
Lawyer Disciplinary Board
Date _____


C. Blaine Myers, Esquire
P.O. Box 1472
Parkersburg, WV 26101
Hearing Panel Subcommittee
Lawyer Disciplinary Board
Date 11-26-97