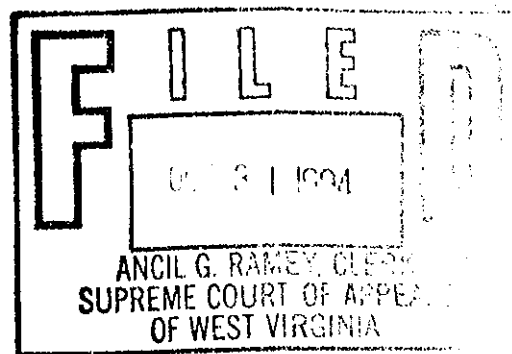


Per Curiam:

The Lawyer Disciplinary Board
of the West Virginia State Bar,

No. 22370 and No. 22409, consolidated v.

Sharon Y. Massie, an administratively
suspended member of The West Virginia
State Bar



This matter is before the Court upon the recommendation of the Hearing Panel of the Lawyer Disciplinary Board (the "Board") that the law license of Ms. Sharon Y. Massie be suspended indefinitely.¹ The Board further recommends that Ms. Massie be prohibited from applying for reinstatement for two years and that she be required to prove that she has remained drug-free for at least two years immediately prior to any reinstatement petition. Upon review of this matter, we adopt the Board's recommendation and hereby suspend Ms. Massie's license to practice law. Further, in accordance with the recommendations of the Board, we order Ms. Massie to reimburse the Board for its costs in the amount of \$335, prohibit her from applying for reinstatement for two years, and require her to prove that she has remained drug free for two years prior to any reinstatement petition.

¹Ms. Massie's license is currently suspended for failure to comply with continuing legal education requirements.

Two separate actions against Ms. Massie have been consolidated for our evaluation.² The Board determined first, in counts one through three, that Ms. Massie acted inappropriately in various client matters by failing to diligently pursue claims, failing to communicate with her client, misrepresenting the status of a retainer to the Board, maintaining private practice while employed as a public defender, and misrepresenting facts relating to an unemployment benefits form. Second, the Board concluded that Ms. Massie's license should be suspended based upon her conviction of the felonies of aiding and abetting the acquisition and possession of and causing to be acquired and possessed a controlled substance. Each of these matters shall be examined separately in this order.

I.

Count one against Ms. Massie asserts that she failed to diligently pursue the claims of Mr. Frank McCoy and failed to file appropriate petitions on his behalf. Mr. McCoy approached Ms. Massie on October 29, 1990, requesting legal assistance in the modification of a child support order and other domestic matters regarding his ex-wife and her boyfriend. Ms. Massie was paid \$500 as a retainer for legal services by Mr. McCoy. Eight months after

²The Board requested that the matters against Ms. Massie be consolidated for consideration by this Court. The various disciplinary actions currently pending against Ms. Massie will therefore be combined for consideration in this order and for appropriate disciplinary action based upon Ms. Massie's conduct in these consolidated matters.

the initial meeting and payment, Ms. Massie had not yet performed any services on Mr. McCoy's behalf. Furthermore, Ms. Massie failed to inform the McCoy's when she relocated her offices and subsequently left private practice to join the Public Defender's Office.

In a letter to West Virginia Bar Counsel dated October 8, 1991, Ms. Massie represented that she would refund the \$500 to the McCoy's within one week. Although she informed Bar Counsel on several occasions that the money had been mailed, the McCoy's did not receive the refund until January 15, 1992.

The Board contends that Ms. Massie's failure to diligently pursue the McCoy's' claim and her failure to inform them of her relocation violated several Rules of Professional Conduct. First, the Board found that Ms. Massie violated Rule 1.3 of the West Virginia Rules of Professional Conduct by failing to act with reasonable diligence in representing the McCoy's.³ The Board also found that Ms. Massie's failure to communicate with the McCoy's during the course of her representation constituted a violation of Rule 1.4(a) requiring a lawyer to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." With regard to the closing of her private practice, the Board alleges that Ms. Massie's

³Rule 1.3 of the West Virginia Rules of Professional Conduct provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

failure to inform the clients of her relocation violated Rule 1.16(d) which requires an attorney to take reasonable steps to protect a client's interests when the attorney terminates representation.⁴ Finally, by making numerous misrepresentations to Bar Counsel as to the status of the refund due to the McCoys, the Board asserts that Ms. Massie violated Rule 8.4(c) prohibiting an attorney to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

II.

Count two addresses Ms. Massie's representation a closing attorney in connection with a home purchase in September 1990. Ms. Massie was retained by the seller, Mr. Milford Ziegler, to draft the deed, deed of trust, and promissory note. Subsequent to a drafting error on the original documents, Ms. Massie represented to the parties that the documents would be corrected and filed. The documents were never recorded, and numerous telephone calls from the buyer, Mr. Meredith White, to Ms. Massie were not returned.

⁴The text of Rule 1.16(d) provides as follows:

"Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law."

Despite representations to Bar Counsel in March, May, and August 1992 that she would finalize the documents, Ms. Massie neither obtained the signatures nor filed the documents.⁵

The Board found that Ms. Massie violated the diligence requirements of Rule 1.3, as quoted above, by failing to record the deed and deed of trust after promising to do so. By subsequently misrepresenting the status of that matter to the Board, the Board asserts that Ms. Massie violated Rule 8.4(c), as quoted above.

III.

Count three addresses various difficulties experienced by Ms. Massie while serving as an assistant public defender for Kanawha County, employment which began in August 1991. According to the Board, Ms. Massie suffered occasional episodes, in late 1991, which involved inability to speak and temporary trance-like symptoms. When approached by Chief Public Defender George Castelle regarding these episodes, Ms. Massie explained that she had experienced some medical problems which had been corrected. The condition was experienced again, however, during an April 6, 1992, hearing before Judge Charles E. King, Jr., in the Circuit Court of Kanawha County. During this juvenile hearing, Ms. Massie became incapacitated and

⁵Although Ms. Massie testified that she had prepared the deed and deed of trust, the Board later learned that neither party had any recollection of having signed the corrected documents. Ms. Massie did not respond to the Board's request that she produce copies of the allegedly finalized documents.

admitted to being "kind of drugged up."⁶ She then permitted her client and a caseworker to participate in the remainder of the hearing.

Ms. Massie experienced a wide array of additional difficulties while employed at the Public Defender's Office. In one instance, Judge Andrew MacQueen of the Kanawha County Circuit Court had requested that she prepare an order granting bond for her client. She disappeared, however, for the remainder of that day and caused her client to unnecessarily spend the weekend in jail. She subsequently testified in the hearing before the Board that she had no recollection of this event.

After the Public Defender's Office inadvertently learned that Ms. Massie's physician had warned her to stop abusing drugs which he had prescribed for her,⁷ Ms. Massie agreed to seek counseling for drug abuse. The staff at the Public Defender's Office also discovered documents in the computer indicating that Ms. Massie represented private clients while employed as a public defender.⁸

⁶Ms. Massie apparently informed Judge King that she had incurred an on the job injury for which certain medication had been prescribed. She advised him that she had been unable, due to a heavy caseload, to recuperate fully and had taken medication immediately prior to the hearing.

⁷A staff member had mistakenly opened a letter to Ms. Massie from her physician in which the physician had warned Ms. Massie that if she did not stop abusing the drugs he had prescribed to her, she would be reported to authorities.

⁸West Virginia Code § 29-21-17 (1993) prohibits a public
(continued...)

In one such instance of private practice, Ms. Massie informed a client that she required immediate payment of his bill due to her obligation to reimburse the Public Defender's Office for time devoted to private practice. When payment of \$400 was made by the client pursuant to that request, however, Ms. Massie did not provide any sum to the office and did not advise the office of her private practice.⁹

The Board also asserts that Ms. Massie misrepresented essential facts on an unemployment benefits form dated August 23, 1992, in which she stated that she had been discharged from the Public Defender's Office due to a "difference of opinion" on how much time should be devoted to each client. The Board maintains that this claim was incorrect and unsubstantiated and that Ms. Massie was aware that she had been relieved of her caseload due to her drug impairment.¹⁰

⁸(...continued)
defender from engaging in private practice except for pro bono work for family members or close friends. Public defenders are given 90 days at the beginning of their tenure during which all private practice must be concluded.

⁹When Ms. Massie's employment with the Public Defender's Office was terminated on August 17, 1992, she attempted to erase several files from her computer in an apparent effort to destroy evidence of her illegal private practice.

¹⁰Ms. Massie acknowledged that she was addicted to pain medication and underwent inpatient treatment at Mount Regis Hospital in February 1993. She continues to attend therapy sessions and meetings of Narcotics Anonymous and Alcoholics Anonymous.

The Board maintains that Ms. Massie's acknowledged continuation of private practice while employed as an assistant public defender, her false statement to a private client concerning the requirement of reimbursing the Public Defender's Office, and her misrepresentation as to the reason for discharge violated Rule 8.4(c), regarding conduct involving dishonesty, fraud, deceit, or misrepresentation.

IV.

On January 7, 1993, Ms. Massie was arrested for attempting to obtain prescription drugs through fraud. She had apparently telephoned a pharmacy on December 22, 1993, purporting to be from the office of Dr. William Craske, and ordered a prescription for Tylenol #3 in the name of Sharon Massie. On December 30, 1993, a friend of Ms. Massie had picked up the prescription and delivered it to Ms. Massie at her residence in Nitro, West Virginia. While free on bond, she twice attempted to obtain other prescription drugs. Her bond was revoked, and she attended a drug rehabilitation center.

On June 23, 1994, Ms. Massie was convicted, pursuant to a guilty plea, in the United States District Court for the Southern District of West Virginia of aiding and abetting the acquisition and possession of and causing to be acquired and possessed a controlled substance by misrepresentation, fraud, and deception.

She was sentenced to probation for three years and fined \$500. Based upon this conviction, the Board recommends to this Court that the law license of Ms. Massie be suspended.

V.

We have previously dealt with the inactivity of an attorney on client matters and have commented upon the severity of such behavior and the necessity for reprimand. In Committee on Legal Ethics v. Matthews, 186 W. Va. 122, 411 S.E.2d 265 (1991), for instance, an attorney who had neglected an estate matter for almost ten years was issued a public reprimand and ordered to submit to a plan of supervision. In Committee on Legal Ethics v. Charonis, 184 W. Va. 268, 400 S.E.2d 276 (1990), an attorney's license was suspended for two months, with supervision of his practice for one year following reinstatement, for failure to communicate with a client and thereafter refusing to return the client's file. In Committee on Legal Ethics v. Keenan, 189 W. Va. 37, 427 S.E.2d 471 (1993), an attorney's license was suspended indefinitely for failure to act with reasonable diligence, failure to communicate effectively with his client, and failure to provide reports of his medical condition to the Bar.

"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.' Syllabus Point 2, Committee on Legal Ethics v. Six, [181] W. Va. [52], 380 S.E.2d 219 (1989)." Syl. Pt. 1, Committee on Legal Ethics v. Boettner, 183 W. Va. 136, 394 S.E.2d 735 (1990). In the present matter, there is sufficient evidence of the conviction of Ms. Massie and the underlying activity to justify the Board's conclusion that Ms. Massie's license to practice law should be suspended based upon that conviction. We are likewise satisfied that the Board has presented sufficient evidence to justify the requested disciplinary action based upon Ms. Massie's violation of several Rules of Professional Conduct.

In accordance with the recommendations of the Board and in consideration of the evidence presented, we suspend Ms. Massie's license to practice law, order that she be prohibited from applying for reinstatement for two years, order that she be required to prove that she has remained drug-free for at least two years prior to her reinstatement petition, and order that she reimburse the Board for its costs and expenses in the amount of \$335.

It is so Ordered.