

**STATE OF WEST VIRGINIA**

**At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 15th day of September, 1994, the following order was made and entered:**

**Lawyer Disciplinary Board, Complainant**

**vs.) No. 22496**


**William B. McGinley, a member of The West  
Virginia State Bar, Respondent**

**On a former day, to-wit, September 8, 1994, came the complainant, the Lawyer Disciplinary Board, by Ellen F. Golden, its attorney, pursuant to Rule 3.10 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition recommending a suspension of the respondent's license to practice law in the State of West Virginia for a period of ninety days beginning October 1, 1994, and ending December 29, 1994, with automatic reinstatement, and also came the respondent, William B. McGinley, a member of The West Virginia State Bar, by Flaherty, Sensabaugh & Bonasso, and Michele Grinberg, his attorneys, pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary procedure, and presented to the Court his concurrence to the aforesaid written recommended disposition.**

**Upon consideration whereof, the Court is of opinion to and doth hereby adopt the written recommended disposition of the Lawyer Disciplinary Board. It is therefore ordered that the license to practice law in the State of West Virginia of the respondent, William B. McGinley, be, and it hereby is, suspended for a period of ninety days effective on the 1st day of October, 1994, and continuing through the 29th day of**

December, 1994. It is further ordered that the aforesaid license shall be automatically  
reinstated. Chief Justice Brotherton absent.

A True Copy

Attest:   
Clerk, Supreme Court of Appeals

BEFORE THE LAWYER DISCIPLINARY BOARD

STATE OF WEST VIRGINIA

IN RE: WILLIAM B. MCGINLEY, a member of I.D. No. 94-01-162  
The West Virginia State Bar

AGREED FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED DISPOSITION

1. William B. McGinley, Respondent herein, is a licensed member of The West Virginia State Bar who practices in Kanawha County, West Virginia, and, as such, is subject to the disciplinary jurisdiction of the West Virginia Supreme Court of Appeals and its properly constituted Lawyer Disciplinary Board.

2. Respondent is General Counsel for the West Virginia Education Association ("employer").

3. In 1989, as part of his duties, Respondent undertook the legal representation of three professional employees ("clients") who had received notice from the county board of education ("school board") that their position would be eliminated due to "lack of need".

4. Following the actions by the school board, Respondent filed grievances on behalf of the three clients. The hearing examiner ruled in favor of the clients. The school board appealed that ruling to the circuit court.

5. On July 15, 1991, the circuit court reversed the hearing examiner's decision and found in favor of the school board.

6. Respondent advised his clients that he would appeal the decision to the West Virginia Supreme Court of Appeals and further

advised his clients of the appellate procedure requiring that he file the Petition for Appeal on or before November 15, 1991.

7. Respondent advised his clients that he believed they had a strong legal case and that the Circuit Court's decision was in error.

8. By letter dated July 23, 1991, Respondent filed a Notice of Intent to Appeal and a Designation of the Record.

9. On or before November 15, 1991, Respondent failed to file a Petition to Appeal to the West Virginia Supreme Court.

10. At that time, Respondent was unaware he had missed the statute of limitations.

11. One of the clients called periodically. Prompted by one of his client's calls in early 1992, Respondent discovered he had not timely filed the Petition to Appeal. Respondent did not notify his clients.

12. Respondent misstated his failure to file the Petition for Appeal to at least one of his clients on more than one occasion.

13. By letters dated February 18, 1993, sent to each client, Respondent stated that the Supreme Court did not accept the appeal; that a written decision was not issued; and speculated as to a possible reason the appeal was denied.

14. The clients did not learn of Respondent's failure to file and of his misrepresentations until sometime after the statute had run.

15. After it was clear that the clients knew of Respondent's failure to file an appeal and his misrepresentations, the clients put Respondent on notice of their intent to file suit.

16. Respondent, through counsel, contacted Chief Lawyer Disciplinary Counsel to self-report on or about December 1, 1993.

17. The clients filed suit against Respondent and his employer on December 15, 1993. Respondent, through his malpractice carrier, settled with each client. Each client is satisfied with the settlement.

18. By letter dated March 29, 1994, Respondent, through counsel, reported his failure to timely file and that he had made misrepresentations to the clients.

19. At the time of the missed statute of limitations, Respondent supervised 250 to 300 cases and directly handled a large portion of the cases. Upon realizing the inherent dangers of being overworked, Respondent's employer has increasingly relied upon outside counsel to handle day to day responsibility for cases. Respondent still supervises as many cases, but directly handles significantly fewer cases.

20. Respondent now uses a double calendaring system. Respondent and his secretary each keep a calendar. Monthly the secretary provides Respondent with next month's dates to check for any oversights.

21. To his knowledge, Respondent has not made other misrepresentations as to missed statutes of limitation and, to his knowledge, has not missed a statute of limitation on any other occasion.

22. Respondent has no prior record of ethical misconduct.

23. Respondent has been employed by the same employer for ten years. Formal evaluations have been used for the past five years.

Respondent has received the highest evaluation rating each year of his employment.

#### CONCLUSIONS OF LAW

By not timely filing a petition for appeal for three clients, Respondent admits he has violated Rule 1.3 of the Rules of Professional Conduct: "a lawyer shall act with reasonable diligence and promptness in representing a client".

By not contacting each client as to his failure to file a Petition for Appeal, Respondent admits he has violated Rule 1.4(a) of the Rules of Professional Conduct: "a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information".

By misstating the status of the appeal, Respondent admits he has violated Rule 8.4(c) of the Rules of Professional Conduct: "It is professional misconduct for a lawyer to: . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . . ."

#### AGREED RECOMMENDED DISPOSITION

Respondent, through counsel, Michele Grinberg, and the Office of Lawyer Disciplinary Counsel, by Ellen F. Golden, agree that a ninety (90) day suspension with automatic reinstatement appropriately punishes Respondent, adequately serves as an effective deterrent to other members of the Bar and restores public confidence in the ethical standards of the legal profession. The ninety (90) day period of suspension shall begin October 1, 1994 and end December 29, 1994. Since a hearing has not be necessasry, Respondent will not be assessed costs.

Should the Hearing Panel recommend discipline deemed by Respondent to be greater than that set forth supra, Respondent does not waive his right to a full hearing; this Agreed Findings of Fact, Conclusions of Law and Recommended Disposition ("Agreement") becomes null and void; and the Agreement shall not be tendered as evidence or otherwise spread upon the record. However, evidence and legal argument in the Agreement which may be obtained or derived from sources other than this Agreement may be tendered as evidence or otherwise spread upon the record. Should the Agreement become null and void, Respondent agrees to file an answer to the Statement of Charges within ten days.

Ellen F. Golden  
Ellen F. Golden, Esquire  
Office of Lawyer Disciplinary Counsel  
2006 Kanawha Boulevard, East  
Charleston, WV 25311  
304-558-7999

August 8, 1994  
Date

Michele Grinberg  
Michele Grinberg, Esquire  
Counsel for Respondent  
Flaherty, Sensabaugh & Bonasso  
P.O. Box 3843  
Charleston, WV 25338  
304-345-0200

August 8, 1994  
Date

By these signatures set forth below, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board adopts the Agreed Findings of Fact, Conclusions of Law and Recommended Disposition as its Recommended Disposition.

R. Kemp Morton  
R. Kemp Morton, Esquire  
Chairman, Hearing Panel Subcommittee

Sept 6, 1994  
Date

Cheryl L. Henderson  
Cheryl L. Henderson, Esquire  
Member, Hearing Panel Subcommittee

Sept. 6, 1994  
Date

Priscilla Haden  
Priscilla Haden, Lay Member  
Hearing Panel Subcommittee

Sept. 1, 1994  
Date