

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 30th day of May, 1996, the following order was made and entered:

Office of Lawyer Disciplinary
Counsel, Petitioner

vs.) No. 23412

Richard A. Hayhurst, a suspended
member of The West Virginia State
Bar, Respondent

On a former day, to-wit, May 23, 1996, came the petitioner, the Office of Lawyer Disciplinary Counsel, by Sherri D. Goodman, Chief Lawyer Disciplinary Counsel, and also came the respondent, Richard A. Hayhurst, a member of The West Virginia State Bar, by Kay, Casto, Chaney, Love & Wise, John T. Kay, Jr., and Craig M. Kay, his attorneys, and presented to the Court a joint agreement stipulating to the following: (1) the respondent's license to practice law in the State of West Virginia shall be suspended for a period of three months, said suspension to become effective upon the first day of respondent's incarceration. If the respondent does not receive a sentence of incarceration, the suspension shall become effective thirty days from entry of this Court's order suspending respondent's license to practice law in the State of West Virginia; (2) the respondent shall continue the implementation of the bookkeeping and billing practices recommended by his counsel; (3) beginning on January 1, 1997, and continuing for three years, the respondent shall provide the Office of Disciplinary Counsel, by October 20th of each year, an affidavit verifying that he has met all tax filing requirements for the relevant federal, state and municipal governments, with failure to

comply resulting in a further suspension of his license to practice law in the State of West Virginia for an additional two years; and (4) respondent shall continue his current counseling for a period of one year from the date of the reinstatement of his license to practice law in the State of West Virginia.

Upon consideration whereof, the Court is of opinion to and doth hereby approve said agreement. It is therefore ordered: (1) that respondent's license to practice law in the State of West Virginia be, and it hereby is, suspended for a period of three months, said suspension to become effective upon the first day of respondent's incarceration, for violation of Rule 8.4(b) of the Rules of Professional Conduct. If the respondent does not receive a sentence of incarceration, it is further considered and ordered that said suspension shall become effective thirty days from entry of this order; (2) respondent shall continue the implementation of the bookkeeping and billing practices recommended by his counsel; (3) beginning on January 1, 1997, and continuing for three years, the respondent shall provide the Office of Disciplinary Counsel, by October 20th of each year, an affidavit verifying that he has met all tax filing requirements for the relevant federal, state and municipal governments, with failure to comply resulting in a further suspension of his license to practice law in the State of West Virginia for an additional two years; and (4) respondent shall continue his current counseling for a period of one year from the date of the reinstatement of his license to practice law in the State of West Virginia.

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

A True Copy

Attest: 
Clerk, Supreme Court of Appeals

BEFORE THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

v.

Supreme Court No. 23412
I.D. No. 96-02-133

RICHARD A. HAYHURST, a member
of The West Virginia State Bar,

Respondent.

STIPULATION OF THE PARTIES

The parties in this disciplinary proceeding, the Office of Disciplinary Counsel, by Sherri D. Goodman, and Respondent Richard A. Hayhurst, personally and by counsel, John T. Kay, Jr. and Craig M. Kay, enter into the following stipulations of fact, law and recommendation concerning discipline:

FINDINGS OF FACT

1. Richard A. Hayhurst ("Respondent" herein) is a lawyer practicing in Parkersburg, Wood County, West Virginia, and, as such, is subject to the disciplinary jurisdiction of the Supreme Court of Appeal of West Virginia and its properly constituted Lawyer Disciplinary Board. Respondent was admitted to The West Virginia State Bar on June 14, 1972.
2. On April 12, 1996, Respondent entered a guilty plea to a single-count information charging him with the failure to file an income tax return for the year 1991 in violation of 26 U.S.C.

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§ 7203 before the United States District Court for the Southern District of West Virginia. A copy of the Order accepting the guilty plea, the information and the plea agreement are attached hereto.

3. Respondent also did not timely file federal income tax returns for the years 1989, 1990 and 1992 or timely pay said taxes; did not timely file state income tax returns for the years 1989 through 1992 or timely pay said taxes; and did not timely file Parkersburg B&O tax returns or timely pay said taxes.

4. Respondent has paid to the State of West Virginia the income tax due for the years 1989 through 1992 and has timely filed his federal income tax return for the year 1994 and paid the amount due thereon. Respondent has obtained an automatic extension to file his 1995 federal and state income tax returns and has paid a substantial amount of his estimated 1995 federal income tax liability. Respondent will file his 1995 federal income tax return on or before the due date and will pay the balance due thereon in full. Respondent is making arrangements with the Internal Revenue Service, the State of West Virginia and the City of Parkersburg to pay the amounts owed as soon as he is in a financial position to do so.

5. As an aggravating factor, Respondent acknowledges that In re: Richard A. Hayhurst, I.D. No. 96-02-053, he, Respondent violated Rules 5.5(a) and 6.4(d) of the Rules of Professional Conduct by signing the name of attorney M. Catherine McKay, who was at that time admitted to practice in Ohio, without her

specific permission in order to comply with Ohio Rules for Admission to Practice.

6. As a mitigating factor, Respondent is seeking medical, psychiatric and counseling assistance to address his emotional and physical health problems, which problems have contributed to his failure to file the various returns in issue. Respondent has agreed to continue with the prescribed treatment and counseling of his physicians and counselors so that the physical and emotional problems can be dealt with and be eliminated.

CONCLUSIONS OF LAW

7. Respondent acknowledges that he violated Rule 8.4(b) of the Rules of Professional Conduct which prohibits a lawyer from committing a criminal act that adversely reflects on his honesty, trustworthiness or fitness as a lawyer in other respects. See Committee on Legal Ethics v. Goode, No. 20226 (W.Va. 7/24/91); Committee on Legal Ethics v. Dues, No. 21424 (W.Va. 12/11/92).

RECOMMENDATION CONCERNING DISCIPLINE

8. The parties stipulate that a fair and proportional sanction for his violation of Rule 8.4(b) of the Rules of Professional Conduct is the following:

(a) Respondent's law license will be suspended for three months. If Respondent receives a sentence of incarceration from the United States District Court, the suspension will begin on the first day of his incarceration. If Respondent does not receive a sentence of incarceration, the suspension will begin thirty days following the Supreme Court's Order adopting this recommendation.

(b) Respondent agrees to continue the implementation of the bookkeeping and billing practices recommended by his counsel.

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(c) For three years beginning in 1997, Respondent will provide the Office of Disciplinary Counsel by October 20 of each year an affidavit verifying that he has met all tax filing requirements for the United States, the State of West Virginia and the City of Parkersburg. Should Respondent provide false information in said affidavit, he will be in violation of Rule 8.1(a) of the Rules of Professional Conduct. Upon proof by the Office of Disciplinary Counsel that Respondent has violated Rule 8.1(a), Respondent agrees that his law license will be suspended for a period of two years.

(d) Respondent agrees to continue the current counseling he is receiving for a period of one year from the date of the reinstatement of his law license.

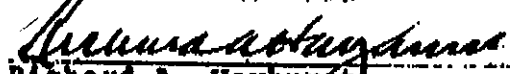
9. It is the understanding of the parties that if the Supreme Court rejects this recommended sanction, Respondent still possesses the opportunity to request a mitigation hearing pursuant to Rule 3.18(e) of the Rules of Lawyer Disciplinary Procedure.


OFFICE OF DISCIPLINARY COUNSEL

By Counsel


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