

**STATE OF WEST VIRGINIA**

**At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 12th day of September, 1996, the following order was made and entered:**

**Lawyer Disciplinary Board,  
Complainant**

**vs.) No. 23413**

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

**On a former day, to-wit, August 2, 1996, 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 its written recommended disposition in the above-captioned proceeding recommending that respondent (1) receive a public reprimand; (2) write a letter of apology to Judge Ed Lane, Washington County Court of Common Pleas, Marietta, Ohio; (3) comply with the State of Ohio's Rules for the Admission to Practice Law; and (4) reimburse M. Catherine McKay for travel and work-related expenses incurred while she was his employee. Thereafter, on the same day came the Lawyer Disciplinary Board, by Sherri D. Goodman, Chief Disciplinary Counsel, pursuant to Rule 3.11, Rules of Lawyer Disciplinary Procedure, and presented to the Court its written consent thereto.**

**Upon consideration whereof and there being heard neither objection nor consent from the respondent, the Court is of opinion to and doth hereby adopt the written recommended disposition of the Hearing Panel Subcommittee of the Lawyer Disciplinary Board. It is therefore ordered that the respondent (1) be, and he hereby is, publicly reprimanded; (2) shall write a letter of apology to Judge Ed Lane, Washington County Court**

of Common Pleas, Marietta, Ohio; (3) shall henceforth comply with the State of Ohio's Rules for the Admission to Practice Law; and (4) shall reimburse M. Catherine McKay for travel and work-related expenses incurred while she was his employee.

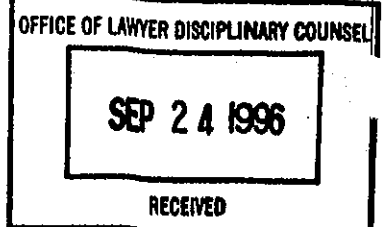
Service of a copy of this order upon all parties hereto shall constitute sufficient notice of the contents herein.

A True Copy

Attest:



Clerk, Supreme Court of Appeals



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

**IN RE: RICHARD A. HAYHURST, a member  
of The West Virginia State Bar**

**I.D. Nos. 96-02-053  
Sup. Ct. No. 23413**

---

**REPORT OF THE  
SUBCOMMITTEE**

---

On May 21 1996, the parties in this disciplinary proceeding, the Office of Disciplinary Counsel, by Sherri D. Goodman, and Respondent Richard A. Hayhurst, personally and by counsel, Craig M. Kay, entered into stipulations of fact, law and recommended discipline. The "Stipulations of the Parties" was submitted to the Hearing Panel Subcommittee on May 22, 1996. On July 10, 1996, the Subcommittee members, Cheryl L. Henderson, Esquire, Chairperson, David J. Romano, Esquire and Sister Mona Farthing, considered the stipulations and deliberated by telephone. The Subcommittee determined that the stipulations were fair and acceptable, and it deemed them adopted by the Hearing Panel. The Subcommittee therefore makes the following findings:

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 Appeals 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 5, 1995, Respondent filed a pleading entitled "Answer and Third Party Complaint with Jury Demand Endorsed" with the Court of Common Pleas of Washington County, Ohio, in the case of *Criss v. Haddix*, Case No. 95-OT-37. The complaint initiating the civil action in *Criss v. Haddix* had been filed on March 7, 1995. The Honorable Edward Lane presided over this civil action.
3. Respondent was not licensed to practice law in Ohio and was required under the Ohio Rules for Admission to Practice to have a member of the Ohio Bar appear as co-counsel.

4. Respondent signed the name of M. Catherine McKay on said Answer and Third Party Complaint without first notifying or receiving her specific permission to do so. Ms. McKay has previously been an associate in Respondent's firm and was licensed in Ohio.

5. The third-party defendant filed a motion to strike the Third Party Complaint on the grounds that Ms. McKay had not authorized her signature. Ms. McKay executed an affidavit to that effect.

6. Respondent filed a motion to withdraw as counsel on the grounds that Ms. McKay "has made an affidavit the thrust of which is that she does not desire to be or remain counsel or record for these parties herein."

7. The Court struck the Answer and Third Party Complaint as a sham and assessed court costs against Respondent. The Court permitted the defendants' new counsel to file proper pleadings.

8. Prior to Ms. McKay leaving Mr. Hayhurst's employment, Respondent and she had a discussion concerning the circumstances under which Ms. McKay would act as local counsel for Respondent in matters pending in the State of Ohio. Respondent and Ms. McKay did not have a clear meeting of the minds with regard to the specific circumstances under which Ms. McKay would agree to associate with Respondent as local counsel in Ohio cases.

9. Respondent acknowledges that he showed poor judgment in signing Ms. McKay's name to the *Haddix* Answer and Third-Party Complaint without her prior specific consent.

10. Respondent acknowledges that he was previously cautioned by Judge Edward Lane to comply with Ohio's rules. On February 1, 1991, Respondent filed a motion to dismiss, answer and counterclaim before the Marietta Municipal Court of Washington County, Ohio in *Bartmess v. Haynes*, Case No. 90 CVF 1265, without having the signature of an attorney licensed in Ohio. The Court ordered all pleadings filed by Respondent to be stricken, in part, because he was not licensed to practice law in Ohio.

#### CONCLUSIONS OF LAW

11. The Subcommittee accepts Respondent's acknowledgment and so finds that he violated Rule 5.5(a) of the Rules of Professional Conduct which provides:

A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

12. The Subcommittee accepts Respondent's acknowledgment and so finds that he also violated Rule 8.4(d) of the Rules of Professional Conduct by engaging in conduct prejudicial to the administration of justice.

13. As another aggravating factor, 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. § 7203 before the United States District Court for the Southern District of West Virginia. 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. The Supreme Court, by Order entered May 29, 1996, suspended Respondent's law license for a period of three months and imposed other sanctions with respect to that matter. See I.D. No. 96-02-133, Supreme Court No. 23412.

#### **RECOMMENDATION CONCERNING DISCIPLINE**

14. The Subcommittee accepts the parties' agreement that a fair sanction for the above ethical misconduct is as follows:

(a) Respondent will receive a public reprimand by the Supreme Court of Appeals of West Virginia;

(b) Respondent will write a letter of apology to the Honorable Ed Lane, Washington County Court of Common Pleas, Court House, Marietta, Ohio 45750;

(c) Respondent agrees that in the future he will never make an appearance in an Ohio court without first fully complying with Ohio's Rules for Admission to Practice;

(d) Respondent acknowledges that he owes certain amounts for travel and work-related expenses incurred by Ms. McKay while she was employed by him. Respondent and Ms. McKay have agreed that Respondent will pay Ms. McKay the amounts due to her in this regard when the funds for said expenses have been received by him from the client.

15. It is the understanding of the parties and the Hearing Panel that should the Hearing Panel or the Supreme Court decline to accept the stipulations as to the recommended sanction, that

Respondent has not waived his procedural rights to file an answer to the Statements of Charges and to participate in a hearing before the Hearing Panel Subcommittee.

*Cheryl L. Henderson* Date: 7/30/96  
Cheryl L. Henderson, Esquire, Chairperson

*David J. Romano* Date: 7/29/96  
David J. Romano, Esquire

*Sister Mona Farthing, S.S.F.* Date: 7-17-96  
Sister Mona Farthing