

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 13th day of November, 1996, the following order was made and entered:

**Lawyer Disciplinary Board,
Complainant**

vs.) No. 22870

**Larry N. Sullivan, a suspended member
of The West Virginia State Bar,
Respondent**

On a former day, to-wit, September 9, 1996, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Alan D. Moats, its chairperson, pursuant to Rule 3.10, Rules of Lawyer Disciplinary Procedure, and presented to the Court the stipulation of facts and its written recommended disposition in the above-captioned proceeding, recommending that the respondent, Larry N. Sullivan, a suspended member of The West Virginia State Bar: (1) be placed on inactive status with The West Virginia State Bar; (2) not be permitted to apply for a change in status for five years; (3) be required to petition for reinstatement and be required to demonstrate to the satisfaction of the Lawyer Disciplinary Board that he is able to represent clients diligently, pursuant to Rule 3.32, Rules of Lawyer Disciplinary Procedure; (4) be barred from applying for admission to any other Bar during this five-year period of time; and (5) give notice to The West Virginia State Bar if applying for admission in another jurisdiction, for violating Rules 1.7(a), 1.15(b), 1.4(a), 1.3, 1.16(d) and 8.1(b), Rules of Professional Conduct.

Upon consideration whereof, the Court is of opinion to and doth hereby accept the stipulations of fact and the written recommended disposition. It is therefore

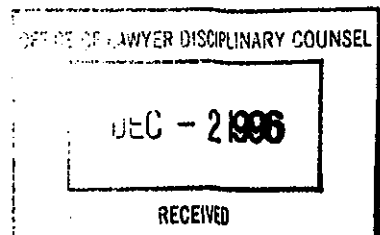
ordered that the respondent: (1) is placed on inactive status with The West Virginia State Bar; (2) is not permitted to apply for a change in status for five years; (3) petition for reinstatement and demonstrate to the satisfaction of the Lawyer Disciplinary Board that he is able to represent clients diligently; (4) is barred from applying for admission to any other Bar during this five-year period of time; and (5) shall give notice to The West Virginia State Bar if applying for admission in another jurisdiction.

Service of an attested copy of this order shall constitute sufficient notice of the contents herein.

A True Copy

Attest:

Cammie Bowling
Interim Clerk, Supreme Court of Appeals



FILED

SEP - 9 1996

ANCIENT G. RAMEY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

BEFORE THE LAWYER DISCIPLINARY BOARD STATE OF WEST VIRGINIA

Re: LARRY N. SULLIVAN, a suspended member of
West Virginia State Bar (No. 3654)

I.D. Nos.: 92-02-115, 92-02-296,
93-02-081 & 94-02-296

Supreme Ct. No.: 22870

HEARING PANEL SUBCOMMITTEE REPORT

On July 3, 1996, the parties to this disciplinary action, the Office of Disciplinary Counsel, by Sherri D. Goodman, and the Respondent, Larry N. Sullivan, *pro se*, submitted to this Hearing Panel Subcommittee stipulations of fact, law and recommended discipline. The Hearing Panel Subcommittee members, having reviewed the stipulations and having deliberated among themselves, have decided to accept the stipulations. Therefore, the Hearing Panel makes the following Findings of Fact and Conclusions of Law and Recommended Sanction:

FINDINGS OF FACT and CONCLUSIONS OF LAW

Count I

1. Larry N. Sullivan ("Respondent" herein) is a licensed member of The West Virginia State Bar who practiced 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 May 20, 1969. Respondent moved to North Carolina on or about August 20, 1994 to become a paralegal instructor at the Fayetteville Technical Community Center. His law license was suspended for nonpayment of dues on November 21, 1994.

2. Maxine Staats Clonch, now Maxine Staats, consulted with Respondent on May 27, 1991, for representation with respect to a divorce. *Maxine Staats Clonch v. George W. Clonch*, Civil Action No. 91-C-911 in the Circuit Court of Wood County.

3. Respondent told her that her husband would need to be represented by separate counsel. Respondent agreed to arrange for her husband to be represented. Respondent charged Ms. Staats a

total of \$475.00 to be divided as follows: \$300.00 was for his fees; \$75.00 was for the filing fee; and \$100.00 was for her husband's attorney.

4. Respondent prepared a settlement agreement which Ms. Staats signed on May 28, 1991. Respondent had Mr. Clonch sign the agreement on May 29, 1991, without benefit of an attorney. Respondent gave Mr. Clonch the title to a 1988 30-foot camper in accordance with the terms of the settlement agreement.

5. Respondent later made an appointment for Mr. Clonch with attorney Jodi Boylen.

6. Respondent did not pay Ms. Boylen the \$100.00. Ms. Staats became dissatisfied with Respondent and discharged him on December 6, 1991. She demanded a refund of the \$100.00.

7. Respondent refused to refund the \$100.00. Ms. Staats sued Respondent and received a default judgment. She attached checks issued by the Supreme Court to Respondent for his services as Mental Hygiene Commissioner. She also filed a judgment lien against Respondent's house. When it was sold in January of 1995, Ms. Staats received the remainder of her judgment, including interest and costs.

8. By having Mr. Clonch sign a settlement agreement prior to consulting an attorney, by choosing Mr. Clonch's attorney and collecting a fee for the same, Respondent violated Rule 1.7(a) of the Rules of Professional Conduct, which provides:

RULE 1.7. Conflict of Interest: General Rules.

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.

9. By refusing to refund money collected but not used for its specific purpose, Respondent violated Rule 1.15(b) of the Rules of Professional Conduct, which provides:

RULE 1.15. Safekeeping Property.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Count II

10. The findings of fact contained in ¶ 1 of the Subcommittee Report are restated and incorporated herein.

11. Opal Seaman retained Respondent in the Summer of 1987 to represent her with respect to injuries she received in an automobile accident on February 4, 1987.

12. Respondent conducted unsuccessful negotiations with Dairyland Corporation, the driver's insurance company, and filed suit on February 3, 1989, for \$6,000.00. The defendant had since moved from her address and service was never obtained.

13. The lawsuit was dismissed under the two-year rule. Respondent, however, believed that, as a third-party beneficiary of the contract of insurance with Dairyland Corporation, she could bring an action against the insurance company. However, Respondent took no such action after filing suit and failing to obtain service on the defendant.

14. On December 17, 1991, Mrs. Seaman wrote to Respondent complaining that he refused to respond to her calls or a prior letter.

15. Mrs. Seaman died sometime thereafter and her son, Robert Seaman, filed an ethics complaint on July 15, 1992.

16. By failing to communicate with his client, Respondent violated Rule 1.4(a) of the Rules of Professional Conduct, which provides:

RULE 1.4. Communication.

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

17. By failing to take further action when he could not obtain service on the defendant, Respondent violated Rule 1.3 of the Rules of Professional Conduct, which provides:

RULE 1.3. Diligence.

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

Count III

18. The findings of fact contained in ¶ 1 of the Subcommittee Report are restated and incorporated herein.

19. On February 27, 1992, Darwin E. Shrader retained Respondent to seek a modification of child support. Mr. Shrader had been laid off and could not make the monthly payments. Respondent charged and was paid \$200.00 on that date.

20. Respondent obtained a hearing date for April of 1992, but he served Mrs. Shrader's former attorney and was unable to give Mrs. Shrader the required 15 day notice prior to the hearing.

21. Respondent obtained another hearing date in May of 1992. By the time he located Mrs. Shrader, there was insufficient time to serve her with the papers. The next hearing date Respondent obtained was in November of 1992. This hearing was postponed, and Respondent did not have a new order signed until it was too late for effective notice for a December hearing.

22. By that time, Mr. Shrader's unemployment benefits had been attached to pay the child support.

23. Respondent displayed a lack of diligence in representing Darwin E. Shrader in violation of Rule 1.3 of the Rules of Professional Conduct, as cited above.

Count IV

24. The findings of fact contained in ¶ 1 of the Subcommittee Report are restated and incorporated herein.

25. Donald C. Nesselrotte paid Respondent \$200.00 on January 23, 1992, and \$60.00 on March 3, 1992, to obtain a "Publication Divorce" for the client.

26. Respondent failed to pursue this matter and moved to North Carolina on August 20, 1994, without notifying Mr. Nesselrotte or giving him his file.

27. Mr. Nesselrotte filed an ethics complaint on July 18, 1994. On August 5, 1994, the Office of Disciplinary Counsel sent the complaint to Respondent at his Parkersburg, West Virginia post office box. The letter was not returned, but Respondent did not answer. On December 13, 1994, the Office of Disciplinary Counsel sent another letter and forwarded the ethics complaint again to Respondent at his home address in Whispering Pines, North Carolina. Respondent responded in February, 1995. Respondent repaid Mr. Nesselrotte the fee in two installments.

28. Disciplinary Counsel, Teresa A. Tarr, received calls from Respondent's clients who did not know Respondent had moved. He had taken their files with him but had not had the time to work

on these matters. Ms. Tarr made numerous calls to Respondent in an effort to retrieve client files and unearned retainers in September and October of 1994.

29. By failing to notify Mr. Nesselrotte and other clients that he was leaving West Virginia or giving him his file, Respondent violated Rule 1.16(d) of the Rules of Professional Conduct, which provides:

RULE 1.16. Declining or Terminating Representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, 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.

30. By failing to follow through on filing the "Publication Divorce", Respondent violated Rule 1.3 of the Rules of Professional Conduct, as cited above.

31. By failing to cooperate promptly with the Office of Disciplinary Counsel in its request that Respondent respond to the ethics complaint, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct, which provides in pertinent part:

RULE 8.1. Bar Admission and Disciplinary Matters.

[A] . . . lawyer in connection . . . with a disciplinary matter, shall not:

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from [a] . . . disciplinary authority

32. In mitigation, Respondent stated that he had intended to take five weeks to notify his clients that he was closing his office, between July 8 and August 22, 1994. However, because of various administrative delays in North Carolina, he did not sign his contract of employment in Fayetteville until August 15, 1994. He only had three days in which to notify clients before he left West Virginia on August 20, 1994. He had crises involving two clients which necessitated his full attention. Respondent took files with him to North Carolina intending to complete the matters. However, his typewriter was damaged in transit. Before he learned how to use the computer at the College, Disciplinary Counsel Tarr contacted him and asked for the return of Mr. Nesselrotte's files. Respondent further stated that he tried to respond to inquiries by the Office of Disciplinary Counsel

in a timely manner. His ability to respond was hindered by his long commute between home and work and his responsibilities to his new position.

* * * * *

33. As an aggravating factor, on April 30, 1994, Respondent appeared before the Investigative Panel pursuant to a subpoena to discuss what the Investigative Panel perceived to be a general failure of Respondent to represent his clients in a diligent manner and communicate with them. Respondent stated that his responsibilities as a Mental Hygiene Commissioner and a number of *pro bono* cases he had undertaken had made it difficult for him. Respondent represented to the Investigative Panel that he would take the necessary steps to correct the problems in his practice and conform his conduct to the Rules of Professional Conduct.

34. The Hearing Panel Subcommittee agrees with the position of the Office of Disciplinary Counsel that although Respondent's decision to close his practice may have been a positive and realistic one, his failure to protect his clients' interests or inform them that he was leaving to give them an opportunity to pick up their files was inconsistent with his representations to the Investigative Panel.

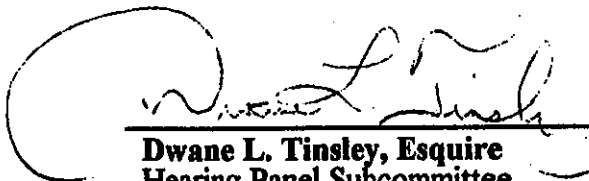
35. Respondent stated that he took his meeting with the Investigative Panel seriously. His decision to leave the practice of law was influenced by his desire to avoid future ethical complaints. He had intended to comply with the Rules of Professional Conduct regarding the closing of a law practice, but was unable to do so due to circumstances set forth in paragraph 32 above.

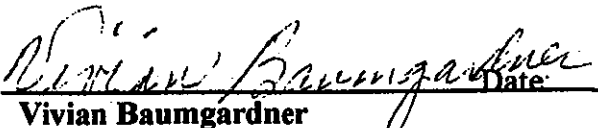
36. Respondent stated that he does not intend to practice law in West Virginia or any other state. He has served on the committee which drafted the West Virginia Rules of Criminal Procedure. He ran the third largest mental hygiene system in West Virginia for twenty years. He also served as supervisor for David Charonis at the request of the State Bar until it became evident Mr. Charonis was not going to cooperate.

RECOMMENDED SANCTION

The Hearing Panel recommends to the Supreme Court of Appeals of West Virginia that Respondent be placed on inactive status with The West Virginia State Bar. He will not be permitted to apply for a change in status for five years from the date of entry of the Supreme Court Order approving this sanction. Should Respondent desire to revert to active practice, he will be required to file a petition for reinstatement in accordance with the procedures set forth in Rule 3.32 of the Rules of Lawyer Disciplinary Procedure. Respondent will be required to demonstrate to the satisfaction of the Hearing Panel and the Court that he is able to represent clients diligently. Respondent cannot apply for admission to any other Bar during this five year period. At any point thereafter, he must give notice to The West Virginia State Bar of his desire to apply for admission in another jurisdiction.


Date: 9-3-96
Alan D. Moats, Chairperson
Hearing Panel Subcommittee
Lawyer Disciplinary Board


Date: 8/30/96
Dwane L. Tinsley, Esquire
Hearing Panel Subcommittee
Lawyer Disciplinary Board


Date: 8/1/96
Vivian Baumgardner
Hearing Panel Subcommittee
Lawyer Disciplinary Board

