

LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA

COMPLAINANT: ANITA PHILLIPS WISEMAN

RESPONDENT: GERALD BRIAN HOUGH
State Bar No. 7724
601 Walnut Street
Glennville, WV 26351

VERIFIED RESPONSE TO COMPLAINT

Now comes Gerald Brian Hough, to respond to Complaint of Anita P. Wiseman, I.D.No. 99-02-303, and states as follows:

Paragraph Nos. 1, 2, and 4 are admitted.

Paragraph No. 3 is denied on the bases of Complainant's conflicting statements to law enforcement authorities about the alleged rape, Complainant's failure of a polygraph test, withdrawal of the prosecutor in the case and assignment of the case by the circuit judge to another, dismissal of the indictment by the substitute prosecutor without prejudice, and no true bill when resubmitted to the grand jury.

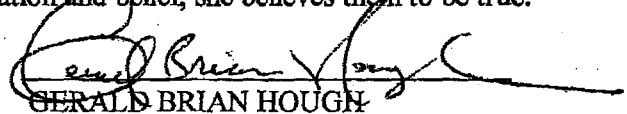
Paragraph No. 5 is denied.

Paragraph No. 6 is admitted in part and denied in part. Upon information and belief, Respondent was named Complainant's academic advisor in the first semester of Complainant's studies at Glennville State College. Upon Complainant's choice of criminal justice as her major, Respondent ceased being her academic advisor of record. However, Complainant appeared at Respondent's office in February, 1998 to request Respondent to advise her on the requisites of the newly instituted paralegal program.

STATE OF WEST VIRGINIA,

COUNTY OF GILMER, TO-WIT:

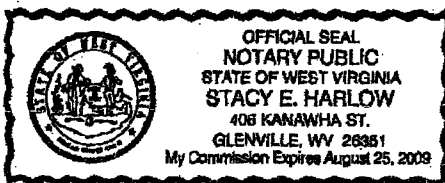
Gerald Brian Hough, the Respondent named in the foregoing response to a verified complaint, being first duly sworn, upon oath, says that the facts and allegations therein contained are true, except insofar as they are therein stated to be upon information and belief, and that insofar as they are therein stated to be upon information and belief, she believes them to be true.


GERALD BRIAN HOUGH

Taken, subscribed, and sworn to before me this 17th day of October, 1999.

My Commission expires Aug 25, 2009.


NOTARY PUBLIC



BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA

I.D. No. 99-02-303

Sup. Ct. No. 28794

In Re: **GERALD B. HOUGH**,
a Member of the West Virginia State Bar

NOTICE OF DEPOSITION

TO: **ANITA WISEMAN**

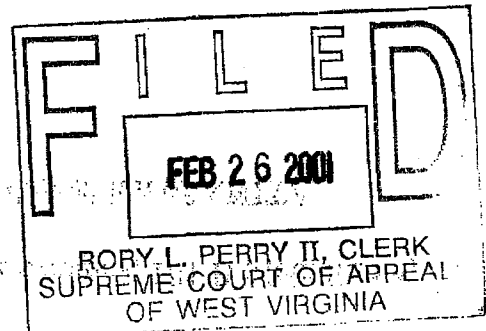
Please be advised and take notice that on **Wednesday, the 14th day of March, 2001, at 1:00 p.m.**, or as soon thereafter as the same may be heard, in the conference room of the Law Office of James Wilson Douglas, 181 B Main Street, Sutton, West Virginia, the undersigned will take the deposition of **ANITA WISEMAN**.

At which time you may be present, if you so desire.

GERALD B. HOUGH, a Member
of the West Virginia State Bar
By Counsel


JAMES WILSON DOUGLAS, L.C.

Attorney at Law
PO Box 425
181B Main Street
Sutton, West Virginia 26601
WVSB No. 1050
Counsel for Respondent



BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA

I.D. No. 99-02-303
Sup. Ct. No. 28794

In Re: **GERALD B. HOUGH**,
a Member of the West Virginia State Bar

AFFIDAVIT OF SERVICE

KNOW YE ALL MEN BY THESE PRESENTS, that I, **RITA JO DOUGLAS**, being a competent person over the age of sixteen (16) years, and not being a party to or an attorney in the instant action do hereby certify that on the 22nd day of February, 2001, did cause a conformed copy of the Civil Case Subpoena in this case to be served through certified mail, return receipt requested, upon **ANITA WISEMAN**.

Rita Jo Douglas

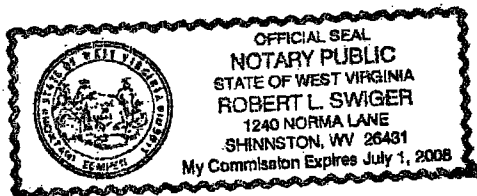
AFFIANT

STATE OF WEST VIRGINIA,

COUNTY OF BRAXTON; TO-WIT:

Taken, sworn to and subscribed before me this 22nd day of February,
2001, by **RITA JO DOUGLAS**.

My commission Expires: July 1, 2008



Robert L. Swiger

NOTARY PUBLIC

serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an Order of the Court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an Order to compel the production. Such an Order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded. (3)(A) On timely motion, the Court by which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance; (ii) requires a person to travel for a deposition to a place other than the county in which that person resides or is employed or transacts business in person or at a place fixed by Order of the Court; (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or (iv) subjects a person to undue burden. (B) If a subpoena (i) requires disclosure of a trade secret or other confidential research development, or commercial information, or (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the Court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may order appearance or production only upon specified conditions.

WVRCP 45(e). Duties in responding to subpoena - (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand. (2) When information subject to a subpoena is withheld on a claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

BEFORE THE HEARING PANEL SUBCOMMITTEE OF THE LAWYER DISCIPLINARY BOARD/STATE OF WEST VIRGINIA
LAWYER DISCIPLINARY CASE SUBPOENA DUCES TECUM

IN RE: Gerald Hough, a member of
The West Virginia State Bar

I.D. No.: 99-02-303
Supreme Court No. 28794

TO: [If the list of the persons/entities subpoenaed is too numerous to fit in this area, type "See Attached List" and attach list, titled "Persons/Entities Subpoenaed."]

Anita Phillips Wiseman
P.O. Box 207
Montrose WV 26253

YOU ARE HEREBY COMMANDED [mark all that apply]

to appear before the Hearing Panel Subcommittee of the Lawyer Disciplinary Board at the place, date and time specified below to
 testify in the taking of a deposition in the above-styled case; or
 testify in a hearing in the above-styled case;

to produce and permit inspection of and copying of designated books, documents or tangible things in your possession, custody or control, as follows:
[If the number of items is too numerous to fit in this area, type "See Attached List- Production/Inspection" and attach list, titled "Production/Inspection".]

to permit inspection of premises located at place, date and time specified below.

Place of Appearance/Inspection:

Days Inn Conference Center
Flatwoods, West Virginia

Date of Appearance/Inspection:

May 1, 2001

Time of Appearance/Inspection:

10:00 a.m.

Issued by: Rory L. Perry, II

Title: Clerk of the Supreme Court of Appeals

Signature: [Handwritten Signature]

Bar Identification No., if applicable: 4120

Date Issued: 4-10-2001

Please state the name and office address of the attorney requesting this subpoena:

Amie L. Johnson [Bar No. 6623]
Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
900 Lee Street East, Suite 1710
Charleston, West Virginia 25301
(304) 558-7999

W. Va. R. Civ. P. 45(c). Place of the examination. - A deponent may be required to attend an examination only in the county in which the deponent resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of the Court [Hearing Panel Subcommittee].

W. Va. R. Civ. P. 45(d). Protection of persons subject to subpoenas. - (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court [Hearing Panel Subcommittee] on behalf of which the subpoena was issued may enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings, and a reasonable attorney's fee. (2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. (B) Subject to paragraph (e)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the Court [Hearing Panel Subcommittee] by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded. (3)(A) On timely motion, the Court [Hearing Panel Subcommittee] by which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance; (ii) requires a person to travel for a deposition to a place other than the county in which that person resides or is employed or transacts business in person or at a place fixed by order of the Court [Hearing Panel Subcommittee]; (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or (iv) subjects a person to undue burden. (B) If a subpoena (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court [Hearing Panel Subcommittee] may order appearance or production only upon specified conditions.

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BEFORE THE HEARING PANEL, SUBCOMMITTEE OF THE LAWYER DISCIPLINARY BOARD/STATE OF WEST VIRGINIA
LAWYER DISCIPLINARY CASE SUBPOENA DUCES TECUM

IN RE: **Gerald Hough, a member of**
The West Virginia State Bar

I.D. No.: 99-02-303
Supreme Court No. 28794

TO: [If the list of the persons/entities subpoenaed is too numerous to fit in this area, type "See Attached List" and attach list, titled "Persons/Entities Subpoenaed."]

Gerald Hough
7 North Court Street
Glenville WV 26351

YOU ARE HEREBY COMMANDED [mark all that apply]

to appear before the Hearing Panel Subcommittee of the Lawyer Disciplinary Board at the place, date and time specified below to
_____ testify in the taking of a deposition in the above-styled case; or
 to testify in a hearing in the above-styled case;

_____ to produce and permit inspection of and copying of designated books, documents or tangible things in your possession, custody or control, as follows:
[If the number of items is too numerous to fit in this area, type "See Attached List- Production/Inspection" and attach list, titled "Production/Inspection".]

_____ to permit inspection of premises located at place, date and time specified below.

Place of Appearance/Inspection:

Days Inn Conference Center
Flatwoods, West Virginia

Date of Appearance/Inspection:

May 1, 2001

Time of Appearance/Inspection:

10:00 a.m.

Issued by: Rory L. Perry, II

Title: Clerk of the Supreme Court of Appeals

Signature: [Handwritten Signature]

Bar Identification No., if applicable: 4120

Date Issued: 9-10-2001

Please state the name and office address of the attorney requesting this subpoena:
Amie L. Johnson [Bar No. 6623]
Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
900 Lee Street East, Suite 1710
Charleston, West Virginia 25301
(304) 558-7999

W. Va. R. Civ. P. 45(c). Place of the examination. - A deponent may be required to attend an examination only in the county in which the deponent resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of the Court [Hearing Panel Subcommittee].

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BEFORE THE HEARING PANEL SUBCOMMITTEE OF THE LAWYER DISCIPLINARY BOARD/STATE OF WEST VIRGINIA
LAWYER DISCIPLINARY CASE SUBPOENA DUCES TECUM

IN RE: **Gerald Hough, a member of
The West Virginia State Bar**

I.D. No.: 99-02-303
Supreme Court No. 28794

TO: [If the list of the persons/entities subpoenaed is too numerous to fit in this area, type "See Attached List" and attach list, titled "Persons/Entities Subpoenaed."]

**Sherry DeRossett
Office of Records and Admissions
200 High Street
Glenville State College
Glenville, WV 26351**

YOU ARE HEREBY COMMANDED [mark all that apply]

to appear before the Hearing Panel Subcommittee of the Lawyer Disciplinary Board at the place, date and time specified below to
testify in the taking of a deposition in the above-styled case; or
 testify in a hearing in the above-styled case;

to produce and permit inspection of and copying of designated books, documents or tangible things in your possession, custody or control, as follows:
[If the number of items is too numerous to fit in this area, type "See Attached List- Production/Inspection" and attach list, titled "Production/Inspection".]

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Issued by: Rory L. Perry, II

Title: Clerk of the Supreme Court of Appeals

Signature: 

Bar Identification No., if applicable: 4120

Date Issued: 9-10-2001

Please state the name and office address of the attorney requesting this subpoena:

Amie L. Johnson [Bar No. 6623]
Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
900 Lee Street East, Suite 1710
Charleston, West Virginia 25301
(304) 558-7999

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Office of Disciplinary Counsel
by Counsel

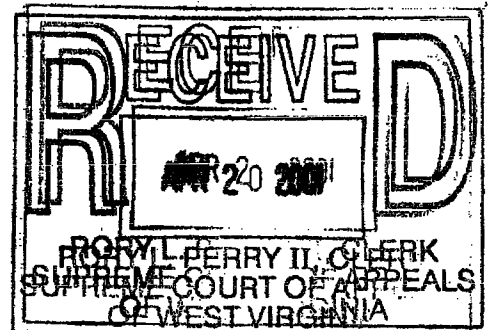
Morgan Mullich for

Amie L. Johnson [Bar No. 6623]
Lawyer Disciplinary Counsel
Office of Lawyer Disciplinary Counsel
900 Lee Street, East, Suite 1710
Charleston, West Virginia 25301
(304) 558-7999
Fax (304) 558-4015

STATE OF WEST VIRGINIA
OFFICE OF DISCIPLINARY COUNSEL
SUITE 1710, HUNTINGTON BANK BUILDING
900 LEE STREET, EAST
CHARLESTON, WEST VIRGINIA 25301
OFFICE: (304) 558-7999
FAX: (304) 558-4015

LAWRENCE J. LEWIS
CHIEF LAWYER DISCIPLINARY COUNSEL
AMIE LANGFITT JOHNSON
LAWYER DISCIPLINARY COUNSEL
MORGAN PALMER GRIFFITH
LAWYER DISCIPLINARY COUNSEL

April 16, 2001



Rory L. Perry, II, Clerk
Supreme Court of Appeals of West Virginia
Building 1, Room E-317
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

In re: Lawyer Disciplinary Board v. Gerald Hough
Supreme Court No. 28794

Dear Mr. Perry:

Enclosed please find for filing the original **Notice of Deposition** and **Certificate of Service** in the above-referenced matter.

Thank you for your assistance in this matter.

Sincerely,

Amie L. Johnson

ALJ/jds
Enclosure: As Stated

cc: James W. Douglas, Esquire (w/enc.)

BEFORE THE HEARING PANEL SUBCOMMITTEE
OF THE
LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA


In re: **Gerald Hough, a member of
The West Virginia State Bar**

I.D. No.: 99-02-303
Supreme Court No.: 28794

CERTIFICATE OF SERVICE

I, Amie L. Johnson, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, do hereby certify that copies of the foregoing **Notice of Deposition** was served upon James W. Douglas, Esquire, Counsel for Respondent, Gerald Hough, Esquire, by placing a true copy thereof in the United States mail first-class, postage prepaid, this 11th day of April, 2001, addressed as follows:

James W. Douglas, Esquire
181B Main Street
Sutton, West Virginia 26601


Amie L. Johnson

GERALD HOUGH

By Counsel



JAMES WILSON DOUGLAS, L.C.

Attorney at Law

181 B Main Street

Post Office Box 425

Sutton, West Virginia 26601

W.V. State Bar # 1050

MOTIONS\Hough.MTD

BEFORE A HEARING PANEL SUBCOMMITTEE
OF THE
LAWYER DISCIPLINARY BOARD

IN RE: GERALD HOUGH, a member
The West Virginia State Bar

I.D. NO.: 99-02-503
SUPREME CT. NO.: 28794

The deposition of ANITA D. WISEMAN was taken
before the Lawyer Disciplinary Board, Suite 1710,
Huntington Bank Building, Charleston, Kanawha County,
West Virginia, on April 4, 2001, commencing at 10:30
a.m. and concluding at 12:30 p.m.

1 Q. Do you believe that he got this transcript to
2 visit some kind of oppression or burden upon you or
3 just to help Wilkie out?

4 A. Just to help Wilkie out.

5 Q. Do you believe that he got this transcript
6 because he wanted to invade your little rights or to
7 help Wilkie out? (SIC: legal)
JWB

8 A. To help Wilkie out.

9 Q. Okay. Now, paragraph 8. Exhibit 1 there. It
10 says "Based upon the information and belief, the
11 witnesses would include the registrar, the dean of
12 students and Shelly L. Morris DeMarino, Prosecuting
13 Attorney of Gilmer County, West Virginia." Okay, this
14 was made in '99. At that time, she was prosecuting
15 attorney. Well, did you ever have any conversations
16 with the registrar of records at Glenville State
17 College? You, yourself. After you became aware of the
18 access of the transcript.

19 A. The registrar being a person over it?

20 Q. Yeah, over the records. You identified the
21 registrar here. I mean, that's your identification.
22 There in the registrar -- I don't care if it was the
23 janitor there in the registrar's office. Did you have

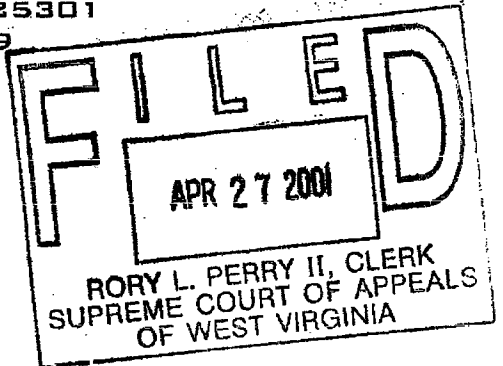
STATE OF WEST VIRGINIA
OFFICE OF DISCIPLINARY COUNSEL

SUITE 1710, HUNTINGTON BANK BUILDING
900 LEE STREET, EAST

CHARLESTON, WEST VIRGINIA 25301

OFFICE: (304) 558-7999

FAX: (304) 558-4015



LAWRENCE J. LEWIS
CHIEF LAWYER DISCIPLINARY COUNSEL
AMIE LANGFITT JOHNSON
LAWYER DISCIPLINARY COUNSEL
MORGAN PALMER GRIFFITH
LAWYER DISCIPLINARY COUNSEL

April 26, 2001

Rory L. Perry, II, Clerk
Supreme Court of Appeals of West Virginia
E-317 State Capitol
1900 Kanawha Boulevard, East
Charleston, West Virginia 25301

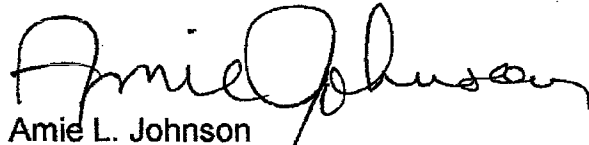
RE: *Lawyer Disciplinary Board v. Gerald Hough*
Supreme Court No. 28794

Dear Mr. Perry:

Enclosed for filing in the above-referenced matter, please find the original "Disciplinary Counsel's Response to Motion to Dismiss."

Thank you for your cooperation.

Sincerely,


Amie L. Johnson

ALJ/jds
Enclosure: As Stated

cc: James W. Douglas, Esquire
Timothy L. Sweeney, Esquire
Cheryl L. Connelly, Esquire
Glenn A. Walker, CPA

First, it does not matter what Ms. Wiseman's opinion is of Respondent's motives. It also does not matter what Ms. Wiseman's opinion is of whether Respondent violated Rule 4.4. Respondent's motivations will be a factual determination for the Hearing Panel Subcommittee to make. Whether his actions violated Rule 4.4 will be legal determinations for the Hearing Panel Subcommittee and Supreme Court to make. In order to make this determination, the Subcommittee will have to hear testimony and other evidence. Complainant clearly thought that what Respondent did was improper, inasmuch as she filed the ethics complaint.

Second, Respondent is ignoring the second clause in Rule 4.4:

... or use methods of obtaining evidence that violate the legal rights of such a person.

[emphasis supplied]. Under the second clause of Rule 4.4, the purposes for obtaining the alleged evidence would not matter. What does matter is that the methods of obtaining the alleged evidence violate someone's rights. In this case, Dr. Debbie Simon of Glenville State College will testify that Complainant's transcripts were confidential under college policy and federal law and should never have been used in an unrelated criminal case.

For these reasons, and any other reasons which may be apparent to the Subcommittee, Respondent's Motion to Dismiss should be denied.

Respectfully submitted,
Office of Disciplinary Counsel by counsel

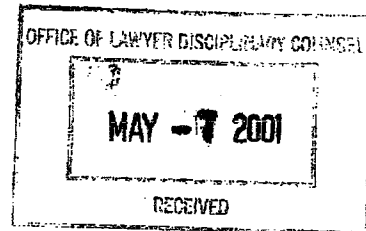


Amie L. Johnson [Bar # 6623]
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BEFORE A HEARING PANEL SUBCOMMITTEE
OF THE
LAWYER DISCIPLINARY BOARD

IN RE: GERALD B. HOUGH, a member
The West Virginia State Bar

I.D. NO.: 99-02-303
SUPREME COURT NO.: 28794



TRANSCRIPT OF PROCEEDINGS HAD at a hearing
by telephone before the Lawyer Disciplinary Board,
Suite 1710, Huntington Bank Building, Charleston,
Kanawha County, West Virginia, on May 1, 2001.

BEFORE: TIMOTHY L. SWEENEY, ESQUIRE - CHAIRPERSON
CHERYL L. CONNELLY, ESQUIRE
GLEN A. WALKER, CPA

Connie Doughty DeMuth & Associates

*Certified Court Reporters
Post Office Box 701
Dunbar, West Virginia 25064*

(304) 766-8708

1 May 1, 2001

2 CHAIRPERSON SWEENEY: Everybody ready to go
3 on the record?

4 MS. JOHNSON: Yes, Sir, we are on the record.

5 MR. DOUGLAS: Except for Mr. Hough.

6 MS. JOHNSON: You want to --

7 CHAIRPERSON SWEENEY: Let the parties just go
8 ahead and identify themselves for the record.

9 MS. JOHNSON: This is Amie Johnson for the
10 Office of Disciplinary Counsel.

11 MR. DOUGLAS: This is James Wilson Douglas in
12 Sutton, West Virginia, counsel for Gerry Hough, the
13 respondent.

14 MS. CONNELLY: This is Cheryl Connelly on the
15 Hearing Panel in Huntington, West Virginia.

16 MR. WALKER: This is Glen Walker on the
17 Hearing Panel.

18 CHAIRPERSON SWEENEY: Tim Sweeney on the
19 Hearing Panel calling in from St. Marys, West Virginia.

20 MS. JOHNSON: And I believe Mr. Hough is also
21 present, along with Mr. Douglas.

22 MR. HOUGH: That's correct.

23 MR. DOUGLAS: Mr. Hough is present.

1 evidentiary record for the Supreme Court of Appeals as
2 required by the 1998 Kupec case.

3 MR. DOUGLAS: Yes, and also, Mr. Sweeney,
4 just so we're clear on the record. Also this
5 recommendation includes a recommended disposition of
6 this particular case as well.

7 CHAIRPERSON SWEENEY: Okay. All right. That
8 is correct. Do you have anything that you'd like to
9 add to that, Ms. Johnson?

10 MS. JOHNSON: No. I think you've set it out.
11 If you would like us to discuss a little bit, we'd be
12 happy to.

13 CHAIRPERSON SWEENEY: Okay. That's probably
14 not a bad idea. Why don't you go ahead, Ms. Johnson,
15 and state basically your synopsis of why you believe
16 this is a reasonable disposition and so forth,
17 particularly with regard to the recommended
18 disposition.

19 MS. JOHNSON: Well, Mr. Hough was a newly
20 admitted lawyer at the time of these events. Maybe
21 having been admitted maybe three or four weeks. I
22 don't remember exactly. This was his first case or one
23 of his first cases. He is on the staff at Glenville

1 with your client, it's true, is it not, that this
2 matter could be considered, in the event of future
3 complaints regarding Mr. Hough, as a past conduct or
4 almost analogous to enhancement or prior events
5 penalties that might result from certain criminal
6 matters.

7 MR. DOUGLAS: I think what you're referring
8 to is pattern of practice allegation.

9 CHAIRPERSON SWEENEY: Correct.

10 MR. DOUGLAS: I would tend to think and maybe
11 I stand to be corrected by all four of you, but my
12 understanding of that has been there has to be an
13 antecedent in finding of some type of discipline except
14 for in a case of like nature. In another words, this
15 situation happened again or something very close to it
16 factually, that it could form a basis for pattern of
17 practice. But since a caution is what this is,
18 basically is not discipline, I would not think it would
19 be an enhancing factor. Now, maybe I'm wrong on that
20 but that's the way I see it. Am I in error on that?

21 CHAIRPERSON SWEENEY: In addition to the
22 pattern of practice, Ms. Johnson, are there times when
23 prior complaints, even though they might not be related

1 in terms of the types of violations are considered by
2 the Board?

3 MS. JOHNSON: Usually all -- Well, it could
4 be. I don't know. I think it would depend on what the
5 future complaint would be about. Certainly if in the
6 future he took an improper step to obtain evidence and
7 having been cautioned not to do something like that, I
8 feel confident that this case would be brought out.
9 Now, if the future case was a lack of diligence
10 allegation or something like that, it may not be
11 relevant.

12 CHAIRPERSON SWEENEY: Okay.

13 MR. DOUGLAS: That's my precise position.

14 CHAIRPERSON SWEENEY: Okay. All right. I
15 just wanted to make sure we all understood the effect
16 of this particular --

17 MS. JOHNSON: But even closed complaints can
18 sometimes be reviewed. It would just all depend on
19 what the nature of the allegations were.

20 CHAIRPERSON SWEENEY: Okay. All right. Mr.
21 Douglas, if you would like to address the issue as to
22 why you think under the circumstances this is a proper
23 and reasonable means or manner to deal with this issue?

1 there were basically three charges made out against my
2 client. The first and the third amount to more or less
3 a swearing match between my client and who the person
4 in the Registrar's Office would be, that was one,
5 Denise Ellyson. And of course, keeping in mind, that
6 the Office of Disciplinary Counsel had the burden of
7 proof of going forward if the Panel did not credit Ms.
8 Ellyson's testimony or they found Ms. Ellyson's
9 testimony and Mr. Hough's testimony to be equally
10 believable. In either case, the Bar would lose.

11 So another substance standpoint is what I
12 consider to be the main charge and that was Rule 4.4
13 infraction, the respect for rights of third persons,
14 which states in part -- Well, I'll just read the whole
15 thing. "A representing client, a lawyer shall not use
16 means that have no substantial purpose other than to
17 embarrass, delay or burden a third person or use
18 methods of obtaining evidence to violate the legal
19 rights of such person."

20 And I think that all the testimony taken in
21 light most favor of my client. I think all the
22 testimony period, because it's one of the motions --
23 Basis for motion to dismiss that we would have heard.

1 Braxton County, but there's not a lot of attorneys over
2 there, especially seasoned attorneys, and Mr. Hough
3 benefit that a lot of us did here in some of the
4 adjacent counties of drawing upon experience of lawyers
5 that had been admitted to the Bar for some period of
6 time.

7 Also I think that, as Ms. Johnson pointed
8 out, this was probably his first criminal case that he
9 had represented. Well, I think it was the first
10 criminal case that he had actually represented
11 somebody. One of his cases, period, in this particular
12 case.

13 Also I think another very telling mitigating
14 point or factor is that there was a document that was
15 filed by my client, which was in response to discovery
16 that was initiated by the Prosecuting Attorney of
17 Gilmer County in 1998, and he had supplied this
18 transcript only in the copy that went to the
19 Prosecuting Attorney. In another words, he did not
20 append this to the document that was filed in the
21 Circuit Clerk's Office of Gilmer County for the world
22 to see. So I think that shows, one, that he didn't
23 intend to hurt this third party and that he was

1 half.

2 MR. DOUGLAS: We've committed to pay up to
3 \$400.

4 CHAIRPERSON SWEENEY: So it's approximately
5 up to 50% of what you anticipate then; is that correct?

6 MS. JOHNSON: Probably.

7 MR. DOUGLAS: Then also the Hearing Panel
8 should know, too, and I'm sure Ms. Johnson will
9 confirm, there were some other documents that I'd made
10 available to her that were not available to her at our
11 cost, such as the Grand Jury transcript in this Perez
12 case. I'd like to think we've cooperated keeping the
13 expenses down. She supplied the court reporting person
14 and I, of course, supplied the place, the location. So
15 I think that's a fair and diligent effort on both
16 parties parts to keep the expenses at a minimum.

17 CHAIRPERSON SWEENEY: Okay.

18 MS. JOHNSON: Could I just briefly address
19 what Mr. Douglas said? The second -- He had
20 essentially two parts to his argument just now and I
21 believe I agree with the second part. A lot of his
22 first part about whether in 1998 there weren't policies
23 in effect that would enforce who could have the

1 violation here --

2 MR. DOUGLAS: You're concerned about the
3 precedence it's setting.

4 CHAIRPERSON SWEENEY: Well, I don't hold any
5 illusions that this is going to be a great precedence
6 setting decision here that we make, but it happened to
7 Gerald and to be perfectly honest with you, I suppose
8 if we can do it for a prosecutor, we can do it for a
9 defense lawyer. I want to be fair about that. If the
10 situation justifies and warrants it. But I think --
11 Are we coming to that, you think? Anybody want to
12 comment on that?

13 MR. DOUGLAS: I don't think so. I mean, I
14 think if somebody just been out -- I remember a case
15 where a guy was in my class. I think, in fact,
16 Cheryl, he probably practiced in Huntington for a
17 while. But he did something pretty bad and, you know,
18 had been practicing like three months or something and
19 he got canned. He got disbarred permanently.

20 So I don't think that's precedence setting
21 at all. I think it depends on the nature of the
22 offense, but proofabilty of the underlying case and,
23 you know, just the facts of what the infraction

1 punitive in nature every time, do they?

2 CHAIRPERSON SWEENEY: Right.

3 MS. CONNELLY: This is more along the lines
4 of a misdemeanor as opposed to a felony. Have I got
5 the distinction?

6 MR. DOUGLAS: No. No. I'd say more like
7 jaywalking as opposed to murder. Yeah. I'm an
8 advocate here, folks.

9 CHAIRPERSON SWEENEY: Okay. That is really
10 all the questions or comments I had. Ms. Connelly, do
11 you have any question or comments of the parties?

12 MS. CONNELLY: No, I don't, Mr. Sweeney.

13 MS. JOHNSON: Instead of a citation, he's
14 getting a warning.

15 MR. DOUGLAS: A caution. Let's be precise.

16 MS. JOHNSON: A caution. That's right.

17 CHAIRPERSON SWEENEY: Mr. Walker, do you have
18 any questions or concerns that you'd like to address to
19 the parties?

20 MR. WALKER: No, I don't.

21 CHAIRPERSON SWEENEY: Okay. Well, I guess
22 procedurally, and I'm open for suggestion on this, what
23 I propose is that maybe the parties hang up and the

1 might take. I was going to try and call Amie on
2 another matter.

3 CHAIRPERSON SWEENEY: I have no idea.

4 MR. DOUGLAS: Okay.

5 CHAIRPERSON SWEENEY: I can't see it taking
6 very long.

7 MR. DOUGLAS: Okay. Yeah, whatever. I mean,
8 I'm not trying to confine you or press you, I just
9 trying to plan whether or not --

10 CHAIRPERSON SWEENEY: Sure. If you just want
11 to hang on for a little while before you call Amie back
12 then, you might be killing two birds with one stone.

13 MR. DOUGLAS: Okay. That sounds good.

14 CHAIRPERSON SWEENEY: Okay.

15 MR. DOUGLAS: Thanks.

16 CHAIRPERSON SWEENEY: Thank you, Amie. Thank
17 you, Jim.

18 MS. JOHNSON: Thank you all.

19 MR. DOUGLAS: Bye.

20 MS. CONNELLY: Thank you. Bye, Amie.

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BEFORE THE HEARING PANEL SUBCOMMITTEE
OF THE
LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA

IN RE: **GERALD HOUGH**, a member of
The West Virginia State Bar

I.D. No.: 99-02-303
Supreme Court No.: 28794

STIPULATIONS OF FACT AND JOINT RECOMMENDATION OF
THE OFFICE OF DISCIPLINARY COUNSEL AND RESPONDENT

The Office of Disciplinary Counsel and Respondent offer these stipulations and this recommendation to the Hearing Panel Subcommittee as a resolution of this Statement of Charges. These stipulated facts are intended to develop the evidentiary record as required by the Supreme Court of Appeals in Lawyer Disciplinary Board v. Kupec, [Kupec I], 202 W.Va. 556, 505 S.E.2d 619 (1998). In addition, the depositions of Complainant and Respondent can be made part of the record for the Subcommittee and Court.

STIPULATIONS OF FACT

1. Respondent was admitted to the West Virginia State Bar on October 13, 1998. He has been a businessman in Glenville, WV since 1976, and has been on the faculty of Glenville State College since 1988.
2. On November 4, 1998, Wilkie Perez was indicted by the Gilmer County Grand Jury for sexual assault in the second degree of Anita Phillips [now Anita Phillips Wiseman].¹ Both Mr. Perez and Ms. Phillips were students at Glenville State College.

¹ The indictment was later dismissed by a special prosecutor, and a second grand jury returned a no true bill. Ms. Wiseman did not testify for the second grand jury.

10. If this matter were to go to hearing, Dr. Debbie Simon, who in November 1998 headed Glenville State College's Registrar's office, would testify that the transcript should never have been obtained or used for this purpose. Respondent would testify that at the time, he thought he could obtain and use the transcript to do justice
11. Respondent would testify that he obtained this transcript because he wanted to investigate a connection between the Prosecuting Attorney Shelly DeMarino and Ms. Phillips. He would testify that he could not understand why the Prosecutor was pursuing what he believed to be a meritless case, and wanted to explore whether Ms. DeMarino had improper motives for the prosecution.² Ms. DeMarino also taught at Glenville State, and taught Ms. Phillips in two criminal justice classes.
12. On January 19, 1999, Respondent filed "Defendant's Supplemental Response to State's Request for Discovery, Inspection and Disclosure of Evidence" where he identified Ms. Phillip's transcript, as well as syllabi for two criminal justice courses Ms. DeMarino taught and a table of contents for a criminal justice textbook. Although the discovery document says the transcript is "attached", it was only attached to the copy sent to Prosecutor DeMarino and was not attached to the document filed with the Circuit Clerk.
13. Sometime in the year 2000, Respondent was disciplined by the President of Glenville State College for obtaining the transcript and using it in the criminal case.

² If this matter were to go to a hearing Ms. DeMarino would deny any improper motive or considerations in the prosecution, and both she and Ms. Phillips Wiseman would deny any improper collusion between them. Respondent would explain why he believed there may have been political or other considerations involved which he wanted to investigate.

conduct a hearing pursuant to the Rules of Lawyer Disciplinary Procedure ("R.L.D.P."). Respondent acknowledges that should the Subcommittee not wholly adopt these "Stipulations of Counsel and Recommended Dismissal", both Respondent and Disciplinary Counsel have thirty days to file with the Supreme Court objections to the Subcommittee's recommended decision pursuant to Rule 3.11 of the R.L.D.P. Respondent also recognizes that the West Virginia Supreme Court of Appeals is the final arbiter in lawyer disciplinary matters. The Court has the jurisdiction to make findings, conclusions and issue sanctions which differ from those stipulated or those recommended by the Office of Disciplinary Counsel and the Hearing Panel Subcommittee. The Respondent recognizes that if the Office of Disciplinary Counsel chooses not to object to the Hearing Panel's recommendations, even if the recommendations are different from these stipulations and recommendation, then Disciplinary Counsel acts as an advocate for the Hearing Panel/Lawyer Disciplinary Board at the Supreme Court.

Respondent and Disciplinary Counsel have read, understand and agree to the stipulations set forth above. These stipulations contain the entire agreement and there are no promises, stipulations, offers or any type of inducements by the parties hereto or by any other person. The parties have entered the stipulations of their own free will without any fraud, duress or any manner of coercion.

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FILED
MAY 31 2001
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

DO NOT REMOVE BEFORE THE LAWYER DISCIPLINARY BOARD
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IN RE: **GERALD HOUGH, a member of
The West Virginia State Bar**

**Supreme Court No. 28794
I.D. No. 99-02-303**

**RECOMMENDATION OF THE HEARING PANEL SUBCOMMITTEE
TO THE SUPREME COURT OF APPEALS**

A Statement of Charges in this case was filed December 20, 2000, and was answered on January 19, 2001. The "Stipulations of Fact and Joint Recommendation of the Office of Disciplinary Counsel and Respondent" were submitted by the Respondent and the Office of Disciplinary Counsel on May 1, 2001. The Hearing Panel Subcommittee made a careful review of the pleadings and "Stipulations of Fact and Joint Recommendation of the Office of Disciplinary Counsel and Respondent," and held a hearing on May 1, 2001, to hear presentations by counsel.

The Subcommittee adopts the parties' stipulations and recommendation, and accordingly makes the following findings and recommendation:

FINDINGS OF FACT

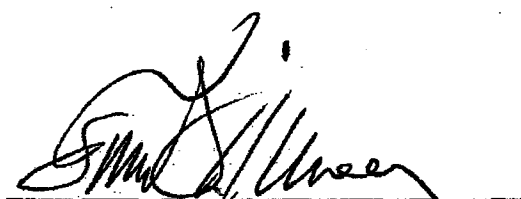
1. Respondent was admitted to the West Virginia State Bar on October 13, 1998. He has been a businessman in Glenville, WV since 1976, and has been on the faculty of Glenville State College since 1988.
2. On November 4, 1998, Wilkie Perez was indicted by the Gilmer County Grand Jury for sexual assault in the second degree of Anita Phillips [now Anita Phillips

Remand to HPS under Rule 3.15
(5-0) (B) (P) (R) (H) (D)
7-5-2001
Norman A. McGraw, C.A. 6, P.S.

about possibly joining a paralegal program he ran.

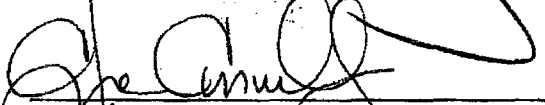
9. Respondent's principal purpose in obtaining the transcript was to defend his client Wilkie Perez in the criminal case.
10. If this matter were to go to hearing, Dr. Debbie Simon, who in November 1998 headed Glenville State College's Registrar's office, would testify that the transcript should never have been obtained or used for this purpose. Respondent would testify that at the time, he thought he could obtain and use the transcript to do justice.
11. Respondent would testify that he obtained this transcript because he wanted to investigate a connection between the Prosecuting Attorney Shelly DeMarino and Ms. Phillips. He would testify that he could not understand why the Prosecutor was pursuing what he believed to be a meritless case, and wanted to explore whether Ms. DeMarino had improper motives for the prosecution.² Ms. DeMarino also taught at Glenville State, and taught Ms. Phillips in two criminal justice classes.
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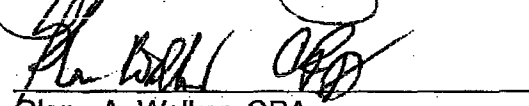
Timothy L. Sweeney, Esquire

May 15, 2001
Date



Cheryl L. Connelly, Esquire

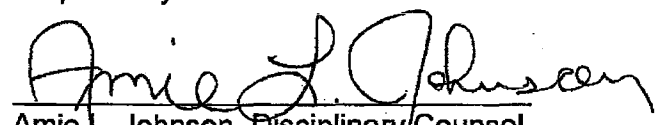
21 May 2001
Date



Glenn A. Walker, CPA

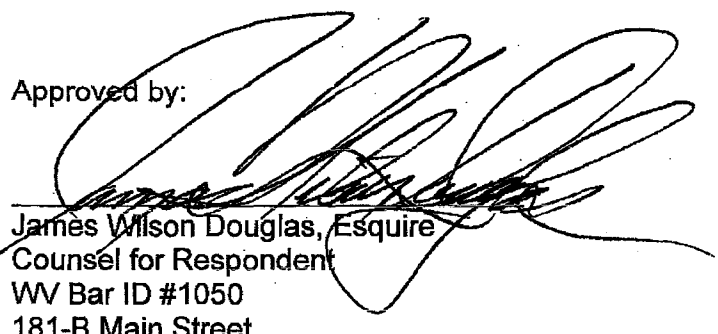
May 25, 2001
Date

Prepared by:



Amie L. Johnson, Disciplinary Counsel
Office of Disciplinary Counsel
WV Bar ID #6623
1710 Huntington Bank Building
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304-558-7999

Approved by:



James Wilson Douglas, Esquire
Counsel for Respondent
WV Bar ID #1050
181-B Main Street
Sutton, West Virginia 26601
304-765-2821

CERTIFICATE OF SERVICE

This is to certify that I, Amie L. Johnson, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the February 13, 2001, served a true copy of the foregoing "NOTICE OF TELEPHONIC HEARING" upon James W. Douglas, counsel for Respondent Gerald Hough, and upon the Hearing Panel Subcommittee, Chairperson by mailing the same, United States Mail with sufficient postage, to the following addresses:

James W. Douglas, Esquire
181B Main Street
Sutton, WV 26601


Timothy L. Sweeney, Esquire
P. O. Box 340
St. Marys, WV 26170



Amie L. Johnson

6. By Order dated July 5, 2001, the Supreme Court declined to adopt the Hearing Panel's recommendation and remanded the case back to the Hearing Panel Subcommittee for compliance with Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.
7. Respondent was on the faculty at Glenville State College at the time of the incident complained of in the Statement of Charges. As a result of his actions, he was disciplined by the President of the College, received a written reprimand in his personnel file, and did not receive a pay raise received by other employees of the College. Moreover, at the time of the incident, Respondent had recently been admitted to the Bar, was a sole practitioner without a more experienced lawyer to assist him, and has conceded his actions were wrong.
8. In light of the foregoing mitigating circumstances, the Office of Disciplinary Counsel recommends that the Hearing Panel Subcommittee recommend dismissal of this matter without sanctions.

OFFICE OF DISCIPLINARY COUNSEL
By Counsel

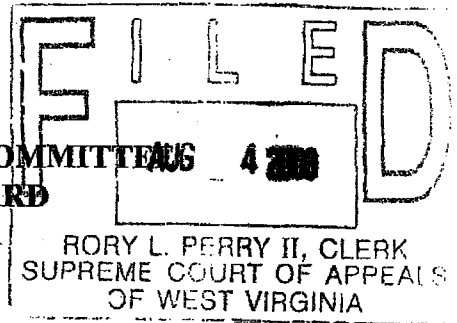


Lawrence J. Lewis [Bar No. 2199]
Chief Lawyer Disciplinary Counsel
2008 Kanawha Boulevard East
Charleston, West Virginia 25311
(304) 558-7999
(304) 558-4015 [facsimile]

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**BEFORE THE HEARING PANEL SUBCOMMITTEE
LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**



In Re: GERALD B. HOUGH, a member of
The West Virginia State Bar

**Bar No.: 7724
Supreme Court No.: 28794
I.D. No.: 99-02-303**

**OFFICE OF DISCIPLINARY COUNSEL'S
MOTION TO DISMISS**

NOW COMES the Office of Disciplinary Counsel, by counsel, Lawrence J. Lewis, and submits the following:

1. A Statement of Charges was filed with the West Virginia Supreme Court of Appeals against Respondent Gerald B. Hough on May 18, 2000.
2. On or about May 1, 2001, the Office of Disciplinary Counsel and Respondent entered into "Stipulations of Fact and Joint Recommendation of the Office of Disciplinary Counsel and Respondent".
3. In the stipulations Respondent admitted to the charges, but in light of Respondent's inexperience, Disciplinary Counsel recommended that no sanction be imposed, that Respondent be cautioned for his conduct and pay \$400.00 in costs towards the total cost of the disciplinary proceeding.
4. On May 7, 2001, a hearing was held in this matter, and the stipulations were presented to the Hearing Panel Subcommittee for its consideration.
5. On or about May 30, 2001, the "Recommendation of the Hearing Panel Subcommittee to the Supreme Court of Appeals", which adopted the stipulations of the parties, was forwarded to the West Virginia Supreme Court of Appeals.

CERTIFICATE OF SERVICE

This is to certify that I, **Lawrence J. Lewis**, Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 31st day of July, 2003, served a true copy of the foregoing "**Office of Disciplinary Counsel's Motion to Dismiss**" upon James W. Douglas, counsel for Respondent Gerald B. Hough, by mailing the same, United States Mail with sufficient postage, to the following address:

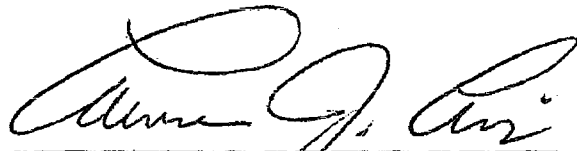
James W. Douglas, Esquire
181B Main Street
Sutton, West Virginia 26601

And upon the Hearing Panel Subcommittee at the following addresses:

Timothy L. Sweeney, Esquire - Chair
Post Office Box 340
St. Marys, West Virginia 26170

Cheryl L. Connelly, Esquire
Post Office Box 1835
Huntington, West Virginia 25719

Mr. Glenn A. Walker, CPA
Post Office Box 1646
Morgantown, WV 26507



Lawrence J. Lewis

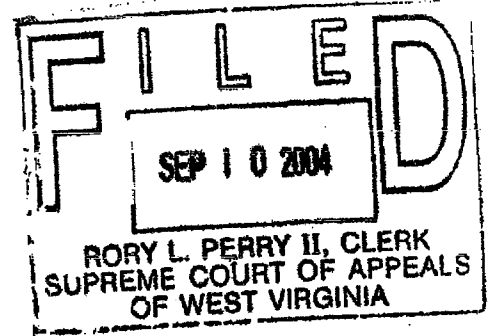
Respondent be cautioned for his conduct and pay \$400.00 in costs towards the total cost of the disciplinary proceeding.

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6. By Order dated July 5, 2001, the Supreme Court declined to adopt the Hearing Panel's recommendation and remanded the case back to the Hearing Panel Subcommittee for compliance with Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.
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STATE OF WEST VIRGINIA
OFFICE OF DISCIPLINARY COUNSEL
2008 KANAWHA BOULEVARD, EAST
CHARLESTON, WEST VIRGINIA 25311
OFFICE - (304) 558-7999
FAX - (304) 558-4015

LAWRENCE J. LEWIS
CHIEF LAWYER DISCIPLINARY COUNSEL
RACHAEL L. FLETCHER
LAWYER DISCIPLINARY COUNSEL
ANDREA J. HINERMAN
LAWYER DISCIPLINARY COUNSEL

September 9, 2004



Rory L. Perry, II, Clerk
Supreme Court of Appeals of West Virginia
State Capitol, Room E-317
Charleston, West Virginia 25305

ATTN: Edyie Nash

Re: *Lawyer Disciplinary Board v. Gerald B. Hough*
Supreme Court No. 28794

Dear Mr. Perry:

Please be advised that the Office of Disciplinary Counsel has no objection to "Report of the Hearing Panel Subcommittee - Recommendation to Grant Disciplinary Counsel's Motion to Dismiss", which was filed on or about August 2, 2004.

If you have any questions, please contact me.

Sincerely yours,

Lawrence J. Lewis

LJL/jds

cc: Jim Douglas, Esquire