

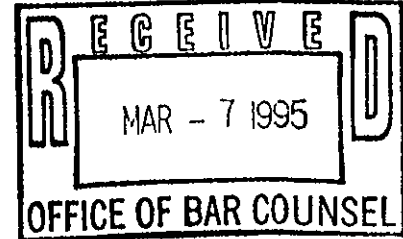
STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 1st day of March, 1995, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 22526

Gregory T. Hinton, an inactive member
of The West Virginia State Bar, Respondent



On a former day, to-wit, February 16, 1995, came the complainant, the Lawyer Disciplinary Board, by Teresa A. Tarr, its attorney, 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 (1) the responden be publicly reprimanded; (2) respondent be supervised for eighteen months by an attorney licensed to practice law in the State of West Virginia, said period not to begin until respondent has returned to active status and resumed the practice of law; and (3) reimbursement of the Lawyer Disciplinary Board for expenses incurred in this matter. Thereafter, on the 23rd day of February, 1995, came the respondent, Gregory T. Hinton, an inactive member of The West Virginia State Bar, by Cohen, Abate & Cohen, and Robert F. Cohen, Jr., his attorneys, and presented to the Court his written concurrence thereto.

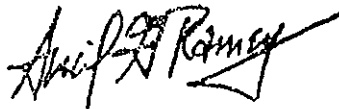
Upon consideration whereof, the Court is of opinion to and doth hereby adopt the written recommended disposition of the Lawyer Disciplinary Board. It is therefore ordered that the respondent: (1) be, and he hereby is, publicly reprimanded; (2) be supervised for a period of eighteen months by an attorney licensed to practice law

8

in the State of West Virginia, said period not to begin until he has returned to active status and resumed the practice of law; and (3) reimburse the Lawyer Disciplinary Board for reasonable expenses incurred in this matter. Justice Brotherton absent. Judge Fred L. Fox, II, sitting by temporary assignment, deemed himself disqualified.

A True Copy

Attest:



Clerk, Supreme Court of Appeals

3

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

**IN RE: GREGORY T. HINTON, an inactive member of I.D. No. 93-03-351
The West Virginia State Bar**

**HEARING PANEL SUBCOMMITTEE FINDINGS OF FACT
CONCLUSIONS OF LAW, MITIGATION
AND RECOMMENDED DISCIPLINE**

The Hearing Panel Subcommittee, having reviewed the Stipulated Findings of Fact, Conclusions of Law, Mitigation, and Recommended Discipline, does make the following Findings of Fact, Conclusions of Law, Mitigation, and Recommended Discipline:

FINDINGS OF FACT

1. Gregory T. Hinton (hereinafter Respondent) is an inactive member of The West Virginia State Bar who, prior to October 15, 1993, practiced in Marion County, West Virginia. As such, Respondent 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 19, 1981.

2. Beginning in 1989, Respondent represented Robert Henderson in a real estate transaction.

3. On March 8, 1989, Mr. Henderson agreed to sell improved real property located on Locust Avenue In Fairmont to Kenneth and Betty Jean Sutphin for the sum of \$55,000.00. The Purchase and Sale Agreement, which was prepared by the Respondent, called for the Sutphins to make a down payment of \$2,000.00 with the

balance to be paid over 20 years at 9% interest. The balance owed was to be secured by a Note and Deed of Trust. The Agreement did not specify a date of closing. It was a hybrid land contract/deed of trust transaction in that the purchasers took immediate possession of the property and the Agreement contained a clause which provided remedies to Mr. Henderson in the event of default by the purchasers.

4. Respondent also prepared the Deed as an extension of his preparation of the Purchase and Sale Agreement. The Deed was executed by Mr. Henderson on January 17, 1990, and was duly recorded and mailed to the Sutphins. As part of his representation of Mr. Henderson, Respondent was also supposed to prepare the Note and Deed of Trust. However, Respondent failed to draft either document.

5. In 1993, the Sutphins defaulted on the account payments in the sum of \$6,498.08. The figure included monthly payments in the amount of \$4,760.87 and tax and fire protection service fees in the amount of \$1737.21.

6. Mr. Henderson did not learn that Respondent had never prepared the Deed of Trust and Note until the Sutphins defaulted. Mr. Henderson did attempt on several occasions to contact Respondent about the default but never made contact. Respondent attempted to return Mr. Henderson's phone calls, but was unsuccessful because Mr. Henderson was employed as an over-the-road trust driver and resided in Florida. Respondent did not attempt to contact Mr. Henderson by mail.

7. Following the default by the Sutphins, Mr. Henderson obtained another attorney, who filed a Complaint for relief in the Circuit Court of Marion County. On October 22, 1993, the Court granted a Motion for Default Judgment and ordered the Sutphins to pay Mr. Henderson \$6,498.08 plus legal interest from August 4, 1993, and that Mr. Henderson would immediately recover possession of the real property. The legal basis for the Court's judgment in favor of Mr. Henderson was the Purchase and Sale Agreement prepared by the Respondent.

CONCLUSIONS OF LAW

8. By failing to prepare and file the Deed of Trust and Note, Respondent violated Rule 1.3 of the Rules of Professional Conduct which provides that "[a] lawyer

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

MITIGATION

9. Respondent's drafting of the Purchase and Sale Agreement essentially provided Mr. Henderson with the same type of protection as he would have had with a Deed of Trust. When the purchasers defaulted, Mr. Henderson was able to obtain full relief based on the language of the Agreement drafted by Respondent. Although, Respondent erred by not preparing the Promissory Note and Deed of Trust, Mr. Henderson did not suffer injury as a result.

10. Mr. Henderson did not file the complaint against Respondent and bears him to ill will as a result of this incident.

11. At that time, Respondent failed to prepare the Promissory Note and Deed of Trust, he had been recently divorced from his wife. Following the divorce, the Respondent had legal custody of his two minor children, a son who was 14 and a daughter who was 7 years old. He and his children were under enormous stress as a result of the divorce. The events which gave rise to the present Statement of Charges were contemporaneous in time with the events in I.D. No. 90-190, in which Respondent was admonished for violating Rule 1.4(a) of the Rules of Professional Conduct. In connection with the admonishment, the Lawyer Disciplinary Board regarded the Respondent's domestic problems as a mitigating factor.

12. Medical evidence establishes that the Respondent has been suffering from a major depressive disorder. Respondent has recognized that he has been unable to practice law. On October 15, 1993, Respondent entered into an Agreement with the Lawyer Disciplinary Board in which he voluntarily went on inactive status. One provision of the Agreement is that Respondent shall not be transferred to active status until he provides written documentation from a licensed physician that he is medically able to resume the practice of law.

RECOMMENDED DISCIPLINE

13. The Respondent shall receive a Public Reprimand.

14. The Respondent shall be supervised for a period of 18 (eighteen) months by another attorney who is licensed to practice law in West Virginia. The supervisory period shall not begin until Respondent has returned to active status and resumed the practice of law. The plan of supervision which is attached hereto and made a part hereof has been approved by Disciplinary Counsel.

15. Respondent shall pay all costs of this proceeding.

16. Disciplinary Counsel and Respondent acknowledge that the foregoing discipline is consistent with the discipline given in similar cases involving neglect of a matter. See, *Committee on Legal Ethics v. Matthews*, ___ W. Va. ___, 411 S.E.2d 265 (1991); *Committee on Legal Ethics v. Smith*, slip op. No. 22012 (W. Va. Jan. 6, 1994).

17. The charge of violating Rule 1.4(a) of the Rules of Professional Conduct shall be dismissed with prejudice. Both parties acknowledge that there is insufficient evidence to support a finding that Respondent violated this Rule by clear and convincing evidence.

Respectfully submitted,

Hearing Panel Subcommittee
of the Lawyer Disciplinary Board



R. Kemp Morton, Chairperson

Date: 1/23/95



Alan D. Moats, Esquire

Date: 1/26/95



Debra K. Sullivan

Date: 1/24/95

BEFORE THE LAWYER DISCIPLINARY BOARD
FOR THE STATE OF WEST VIRGINIA

IN RE: GREGORY T. HINTON, an inactive
member of The West Virginia
State Bar

I.D. No. 93-03-351

STIPULATED FACTS, CONCLUSIONS OF
LAW AND RECOMMENDED DISCIPLINE

COMES NOW the Office of Disciplinary Counsel, by counsel, TERESA A. TARR, and Respondent GREGORY T. HINTON, by his counsel, ROBERT F. COHEN, JR., and stipulate to the following Findings of Fact, Conclusions of Law and Recommended Discipline:

FINDINGS OF FACT

1. Gregory T. Hinton (hereinafter Respondent) is an inactive member of The West Virginia State Bar who, prior to October 15, 1993, practiced in Marion County, West Virginia. As such, Respondent 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 19, 1981.

2. Beginning in 1989, Respondent represented Robert Henderson in a real estate transaction.

3. On March 8, 1989, Mr. Henderson agreed to sell improved real property located on Locust Avenue in Fairmont to Kenneth and Betty Jean Sutphin for the sum of \$55,000.00. The Purchase and Sale Agreement, which was prepared by the Respondent, called for the Sutphins to make a downpayment of \$2,000.00 with the balance to be paid over 20 years at 9% interest. The balance owed was to be

ORIGINAL

secured by a Note and Deed of Trust. The Agreement did not specify a date of closing. It was a hybrid land contract/deed of trust transaction in that the purchasers took immediate possession of the property and the Agreement contained a clause which provided remedies to Mr. Henderson in the event of default by the purchasers.

4. Respondent also prepared the Deed as an extension of his preparation of the Purchase and Sale Agreement. The Deed was executed by Mr. Henderson on January 17, 1990, and was duly recorded and mailed to the Sutphins. As part of his representation of Mr. Henderson, Respondent was also supposed to prepare the Note and Deed of Trust. However, Respondent failed to draft either document.

5. In 1993, the Sutphins defaulted on the account payments in the sum of \$6,498.08. The figure included monthly payments in the amount of \$4,760.87 and tax and fire protection service fees in the amount of \$1,737.21.

6. Mr. Henderson did not learn that Respondent had never prepared the Deed of Trust and Note until the Sutphins defaulted. Mr. Henderson did attempt on several occasions to contact Respondent about the default but never made contact. Respondent attempted to return Mr. Henderson's phone calls, but was unsuccessful because Mr. Henderson was employed as an over-the-road truck driver and resided in Florida. Respondent did not attempt to contact Mr. Henderson by mail.

7. Following the default by the Sutphins, Mr. Henderson obtained another attorney, who filed a Complaint for relief in the in the Circuit Court of Marion County. On October 22, 1993, the Court granted a Motion for Default Judgment and ordered the Sutphins to pay Mr. Henderson \$6,498.08 plus legal interest from August 4, 1993, and that Mr. Henderson would immediately recover possession of the real property. The legal basis for the Court's judgment in favor of Mr. Henderson was the Purchase and Sale Agreement prepared by the Respondent.

CONCLUSIONS OF LAW

8. By failing to prepare and file the Deed of Trust and Note, Respondent violated Rule 1.3 of the Rules of Professional Conduct which provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

MITIGATION

9. Respondent's drafting of the Purchase and Sale Agreement essentially provided Mr. Henderson with the same type of protection as he would have had with a Deed of Trust. When the purchasers defaulted, Mr. Henderson was able to obtain full relief based on the language of the Agreement drafted by Respondent. Although, Respondent erred by not preparing the Promissory Note and Deed of Trust, Mr. Henderson did not suffer injury as a result.

10. Mr. Henderson did not file the complaint against Respondent and bears him no ill will as a result of this incident.

11. At the time Respondent failed to prepare the Promissory Note and Deed of trust, he had been recently divorced from his wife. Following the divorce, the Respondent had legal custody of his two minor children, a son who was 14 and a daughter who was 7 years old. He and his children were under enormous stress as a result of the divorce. The events which gave rise to the present Statement of Charges were contemporaneous in time with the events in I.D. No. 90-190, in which Respondent was admonished for violating Rule 1.4(a) of the Rules of Professional Conduct. In connection with the admonishment, the Lawyer Disciplinary Board regarded the Respondent's domestic problems as a mitigating factor.

12. Medical evidence establishes that the Respondent has been suffering from a major depressive disorder. Respondent has recognized that he has been unable to practice law. On October 15, 1993, Respondent entered into an Agreement with the Lawyer Disciplinary Board in which he voluntarily went on inactive status. One provision of the Agreement is that the Respondent shall not be transferred to active status until he provides written documentation from a licensed physician that he is medically able to resume the practice of law.

RECOMMENDED DISCIPLINE

13. The Respondent shall receive a Public Reprimand.

14. The Respondent shall be supervised for a period of 18 (eighteen) months by another attorney who is licensed to practice law in West Virginia. The supervisory period shall not begin until

Respondent has returned to active status and resumed the practice of law. The plan of supervision which is attached hereto and made a part hereof has been approved by Disciplinary Counsel.

15. Respondent shall pay all costs of this proceeding.

16. Disciplinary Counsel and Respondent acknowledge that the foregoing recommended discipline is consistent with the discipline given in similar cases involving neglect of a matter. See Committee on Legal Ethics v. Matthews, ___ W. Va. ___, 411 S.E.2d 265 (1991); Committee on Legal Ethics v. Smith, slip op. No. 22012 (W. Va. Jan. 6, 1994).

17. The charge of violating Rule 1.4(a) of the Rules of Professional Conduct shall be dismissed with prejudice. Both parties acknowledge that there is insufficient evidence to support a finding that Respondent violated this Rule by clear and convincing evidence.

18. This stipulation is made in lieu of hearing on the Statement of Charges in the above-captioned matter and upon the claim of Respondent for mitigation which hearing is waived by both parties, provided the stipulation and disciplinary disposition are accepted by the Lawyer Disciplinary Board and its Hearing Panel. Both Disciplinary Counsel and Respondent recognize that either the Lawyer Disciplinary Board or its Hearing Panel have the authority to reject the Stipulated Findings, Conclusions and Recommended Discipline. In the event of such rejection, Respondent shall have the opportunity to a hearing de novo, unless the rejection of the stipulation results in a recommendation of discipline less than the

amount stipulated.

19. The foregoing stipulation constitutes the full stipulation entered into by the parties and if rejected by the Lawyer Disciplinary Board shall be of no force and effect. The parties acknowledge that the Supreme Court of Appeals is not obligated to accept either the stipulation of facts, conclusions of law and/or the recommended discipline herein and may adjudicate the matter as seems proper to the Court, subject only to the Respondent's right to seek rehearing and argument.

The agreement of the parties to this stipulation is evidenced by the signatures of counsel to the parties affixed below.

Signed for Respondent Gregory T. Hinton by his counsel, Robert F. Cohen, Jr., on this the 10th day of January, 1995.

Robert F. Cohen, Jr.
ROBERT F. COHEN, JR.
Counsel for Respondent

Signed for Office of Disciplinary Counsel, by its counsel, Teresa A. Tarr, on this the 5th day of January, 1995.

Teresa A. Tarr
TERESA A. TARR
DISCIPLINARY COUNSEL