ORIGINAL

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

09-2080

In Re:	:	
Complaint against	:	**Case No. 09-005**
Sheri Lynn Holda **Attorney Reg. No. 0073993**	:	**Findings of Fact,** **Conclusions of Law and**
Respondent	:	**Recommendation of the** **Board of Commissioners on**
Akron Bar Association	:	**Grievances and Discipline of** **the Supreme Court of Ohio**
Relator	:	
	:	

INTRODUCTION

This matter was heard on the 24th day of August 2009 at the Ninth District Court of Appeals in Akron Ohio. The hearing panel, representing the Board of Commissioners, consisted of Charles Coulson of Lake County, Judge Joseph Vukovich of Mahoning County and McKenzie Davis of Franklin County, the panel Chair. None of the panel members resides in the appellate district from which the complaint originated and served on the probable cause panel that certified the complaint.

Dennis Bartek and Peter Cahoon represented Respondent, Sheri Holda. Patricia Vance, David Friedman and James Campbell represented Relator, Akron Bar Association.

BACKGROUND

On February 17, 2009, a complaint was filed against the Respondent alleging the following violations of the Rules of Professional Conduct:

FILED
NOV 13 2009
CLERK OF COURT
SUPREME COURT OF OHIO

Count 1

Prof. Cond. R. 1.3 Diligence – A lawyer shall act with reasonable diligence and promptness in representing a client;

Prof. Cond. R. 1.4(a)(3) Communication – A lawyer shall keep the client reasonably informed about the status of the matter;

Prof. Cond. R. 1.16(d) Terminating Representation – A lawyer shall promptly deliver to client all papers and property to which the client is entitled;

Prof. Cond. R. 1.16(e) Terminating Representation – A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned; and

Prof. Cond. R. 8.4(c) Misconduct – A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Count 2

Prof. Cond. R. 1.3 Diligence – A lawyer shall act with reasonable diligence and promptness in representing a client;

Prof. Cond. R. 1.4(a)(2) Communication – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;

Prof. Cond. R. 1.4(a)(3) Communication – A lawyer shall keep the client reasonably informed about the status of the matter;

Prof. Cond. R. 1.4(a)(4) Communication – A lawyer shall comply as soon as practicable with reasonable requests for information from the client;

Prof. Cond. R. 1.5(b) Fees – A lawyer shall communicate the basis and rate of fees and expenses to the client within a reasonable time after commencing representation;

Prof. Cond. R. 1.16(e) Terminating Representation – A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned; and

Prof. Cond. R. 8.4(c) Misconduct – A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

On March 11, 2009, the Respondent filed an answer to the complaint.

On August 21, 2009, the panel Chair received an email from Patricia Vance indicating the parties had met and that they would be submitting the case on stipulations. Furthermore, each side would put forth appropriate sanctions at the hearing. On the day of the hearing, the parties requested a delay in the start time of the hearing in an effort to finalize the Stipulations. At the hearing, the parties introduced the Stipulations and a handwritten "Stipulations with regard to Relator's Recommendations." Furthermore, the Relator voluntarily dismissed all the alleged Professional Conduct Rule violations in Count 1 and 2, except the alleged Prof. Cond. R. 1.3 violation in each count.

FINDINGS OF FACT

Respondent is a general practitioner under the business name Holda Legal and Mediation Services. She was admitted into the practice of law in 2001. Prior to her admittance to the practice of law, Ms. Holda served in various capacities in the Summit County court system. Respondent is married with three children.

This matter stems from Respondent's representation of Richard Schoonover (Count 1) and Robin Vilt (Count 2).

COUNT 1 – Richard Schoonover

Respondent was retained by Richard Schoonover in December of 2007 to handle a Release from Administration of his father's estate. Mr. Schoonover gave Respondent his father's original will and a retainer check in the amount of $1,000. From late December to February, Respondent met with family members, including a couple of stepsiblings regarding a home and other issues in dispute. Respondent testified that she had numerous meetings to bring the parties to a compromise. Relator did not dispute this testimony at the hearing. (Tr. 36-37)

Unfortunately, the rest of the facts in the Schoonover matter are in dispute. Respondent contends that she sent Schoonover an itemized invoice regarding time spent on the matter (Panel Exhibit 1 and Tr. 52). Furthermore, Respondent argues that she also requested additional funds from Schoonover in order to properly file the matter in Probate Court. Respondent stated in testimony that she tried to contact Schoonover a number of time, but never received a return call. (Tr. 62-63)

Relator, on the other hand, contends that Schoonover left numerous messages in January with Respondent and only one of which was returned. Relator's counsel stated that Schoonover never received any itemized account of Respondent's time. (Tr. 53). In addition, Relator stated that Schoonover, on March 31, 2008, specifically requested Respondent file the matter in Probate Court. From March to May, Schoonover had not heard from Respondent about the matter. Schoonover, again, left numerous messages with Respondent, none of which were returned. Having not heard back from Respondent, Schoonover contacted the Probate Court where it was explained that the matter had not been filed. Schoonover fired Respondent and hired Attorney Alan Segedy. Segedy requested the Schoonover file from Respondent on or about May 15, 2008. Respondent transferred the file to Sedegy on September 30, 2008, after this grievance was

filed by Schoonover on July 21st. However, Relator did not present any evidence on any of these facts nor did Schoonover testify as to these facts at the hearing.

Respondent contends that the failure to transfer the file to the new attorney was based on Schoonover's failure to provide a written notice stating the termination of her representation and the appointment of new counsel. Respondent argues it was her policy to hold all files until written notice was provided. Respondent has no formal documentation on her transfer of file policy. (Tr. 64-65)

COUNT 2 – Robin Vilt

Respondent was retained by Robin Vilt in June of 2008 to pursue custody of her granddaughter. Shortly after the initial meeting, Vilt provided a check to Respondent in the amount of $1,500. Unfortunately, these are the only facts not in dispute.

Relator contends Vilt received a voicemail from Respondent informing her of a hearing on the matter on August 1, 2008 at 3:00 pm. Vilt was present, however, Respondent did not show up until roughly 3:45, after the Magistrate had dismissed the motion. Both Vilt and the Magistrate attempted to contact Respondent. Once Respondent arrived, Relator contends that Respondent stated she would file an appeal of the Magistrate's Order. Vilt believes that Respondent requested they meet on August 5, 2008, in order to file the appeal. Respondent failed to attend the August 5, 2008, meeting. The appeal was filed on August 19, 2008. The appeal, however, was filed eighteen days after Order, rather than the fourteen days mandated. However, Relator did not present any evidence on any of these facts nor did Vilt testify as to these facts at the hearing.

Respondent, on the other hand, contends that she told Vilt that the hearing was at 3:30 pm and that she only showed up 10 minutes late (3:40, rather than 3:45). Respondent stated that she

lost her cars keys and mobile phone. Furthermore, the Respondent contends that she did not request a meeting to file the appeal, but rather needed additional affidavit from Vilt in order to file an appeal. Additionally, the Respondent admits that the appeal was filed late on August 18, 2008 (and not August 19, 2008, as was stated by the Relator). Respondent contends that she failed to properly file the matter on August 15, 2008, because of fax malfunctions.

Unfortunately for the panel and the Board, the Relator failed to present any evidence to demonstrate the truth of the facts set forth in the Complaint. The only evidence the panel has regarding the Relator's factual allegations were gained through the panel's own questioning of the Respondent and other statements made during the hearing.

The panel's concerns about the Relator's presentation of this case is reflected in the record of this hearing. The concern includes the matters Relator chose to dismiss as well as those that the parties stipulated as violations. Only Respondent and one character witness testified at the hearing.

The panel was inclined to believe there was mix-up in the mail when the Respondent allegedly mailed the itemized account of her time to a client. However, it seems unlikely to have multiple mix-ups in the mail regarding alleged requests for an account of her time. These, taken in conjunction with differing statements regarding phone calls made by the Respondent with two separate clients, confusion of hearing times, "fax malfunctions," and alleged policies dealing with the return of a client's file, create a pattern of conduct.

CONCLUSIONS OF LAW

The panel finds that the evidence, admissions and stipulations are clear and convincing evidence that Respondent violated the following disciplinary rules:

- Prof. Cond. R. 1.3 Diligence – A lawyer shall act with reasonable diligence and promptness in representing a client; and,
- Prof. Cond. R. 1.16(d) Terminating Representation – A lawyer shall promptly deliver to client all papers and property to which the client is entitled.

The parties stipulated and the Respondent admitted to a violation of Prof. Cond. R. 1.3 in both counts. In Count 1, Respondent concedes that she failed to file the *Estate of John D. Schoonover, Jr.* (Stipulation 2). Although there was some dispute whether Schoonover specifically requested Respondent file the estate, Respondent agrees her failure to file the estate with the Probate Court based on lack of communication on the filing fee constitutes a violation of Prof. Cond. R. 1.3. (Tr. 19)

In Count 2, Respondent's failure to appear at the Status Hearing, which resulted in an adverse ruling by the Magistrate, combined with the failure of Respondent to timely file an Objection to the Magistrate's Order constitute a violation of Prof. Cond. R. 1.3. (Stipulation 3)

Relator voluntarily dismissed the Prof. Cond. R. 1.16(d) violation in Count 1. However, the panel found Respondent violated Prof. Cond. R. 1.16(d). This is the only rule allegation dismissed by Relator for which the panel found sufficient evidence of a violation. See *Dayton Bar Assn. v. Millonig,* 84 Ohio St.3d 403, 1999-Ohio-468. The panel bases its conclusion on a simple reading of the rule and the admission of a violation made by Respondent's counsel during the hearing. (Tr. 56-57) Rule 1.16(d) states, "Client papers and property shall promptly be delivered to the client." In addition, comment [8A] of Rule 1.16 stresses the "lawyer should protect the welfare of the client by giving due notice of the withdrawal, suggesting employment of other counsel, delivering to the client all papers and

property to which the client is entitled, cooperating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm." The comment section stresses the importance of doing everything to protect the client's interest despite the termination of representation. It provides specific actions a lawyer should take in order to protect the interest of the client. Respondent's decision to hold Schoonover's file, which included the original will, for nearly four months after the termination of representation cannot be interpreted as protecting the welfare of the client. Respondent's apprehension in forwarding the file to the new attorney without proper documentation is understandable for a brief period. However, Respondent had the optional recourse of giving the file to Schoonover. Respondent's behavior could certainly not be interpreted as "cooperating with counsel subsequently employed," or "endeavoring to minimize the possibility of harm" as the comment suggests. Her inaction in returning the file could only be characterized as a violation of the intended goal set forth in Prof. Cond. R. 1.16(d).

AGGRAVATION AND MITIGATION

The guidelines governing Mitigation and Aggravation in attorney disciplinary cases are found in BCGD Proc. Reg. 10(B)(1) and (2), which list those factors that may be considered in recommending either a more or less severe sanction than is recommended by either party.

AGGRAVATION

Respondent has a prior disciplinary record. Respondent received a public reprimand in 2006 for neglecting a client's divorce action and IOLTA account violations. *Akron Bar Assn. v. Holda,* 111 Ohio St.3d 418, 2006-Ohio-5860.

MITIGATION

Respondent presented an exhibit list with letters from 23 attorneys, judges, former clients and other associates regarding Respondent's good character. In addition, Attorney Annette Powers testified at the hearing as a character witness. It also should be noted that Ms. Powers was asked to write a letter, but insisted on testifying at the hearing.

Respondent did not have a dishonest or selfish motive. Respondent, as part of the Stipulations, agreed to refund both retainers. Respondent had a cooperative attitude towards the proceedings.

Respondent provided testimony regarding her attention-deficit hyperactivity disorder (ADHD) condition. A psychologist at the Bureau of Vocational Rehabilitation diagnosed respondent with ADHD with strong inattentive features. However, the Respondent was not able to provide evidence from a qualified health care professional that the mental disability contributed to cause the misconduct and therefore, the testimony did not meet the necessary requirements set forth in division (g) of BCGD Proc. Reg. 10(B)(2) and cannot be considered.

Finally, Respondent testified that she had taken significant steps toward preventing similar situations in the future. Most notably, Respondent testified she will be moving her law practice in with another attorney, Betty Groner, who will be able to provide the structure Respondent requires to continue as a productive member of the bar. The psychologist with whom Respondent met specifically suggested that Respondent avoid working under self-employment conditions. (Exhibit 5) However, the arrangement Respondent will have with Ms. Groner, dictates that Respondent will remain self-employed and that Ms. Groner will monitor her activities on a daily basis.

RECOMMENDED SANCTION

The Stipulations indicated that the parties did not reach an agreement on the recommended sanction. Relator recommends a term suspension of one year, with the entire one year stayed, upon the following conditions:

A. Holda shall contact OLAP and sign a contact with OLAP and shall follow its recommendations during the period of her stayed suspension;

B. Holda shall follow through with the recommendations as contained in her BVR assessment and report for the length of her stayed suspension;

C. A monitor shall be chosen by the Board of Commissioners to monitor Holda for the length of the stayed suspension. The Relator recommends that one of the following persons to act as her monitor: Attorney Bev Rose, Attorney Barbara Mushkat or Attorney Russ Smith;

D. Holda shall attend a Law Office Management Program/Seminar during her stayed suspension;

E. Holda shall refund $1,000.00 to Schoonover and $1,500.00 to Vilt by no later than October 1, 2009.

Respondent, on the other hand, did not offer a recommended sanction, but requested that she not be given an actual suspension. Respondent did not object to Relator's recommended sanction.

The presentation of evidence and the stipulations did not assist the panel in its decision on an appropriate sanction. The single rule violation the parties stipulated and agreed to is Prof. Cond. R. 1.3. However, neither party submitted case law regarding a Prof. Cond. R. 1.3 violation in his or her Post-Hearing Brief, much less case law concerning Prof. Cond. R. 1.3 and

Prof. Cond. R. 1.16(d) violations. Therefore, case law will merely assist in setting benchmarks for an appropriate sanction.

Respondent did, in the Post-Hearing Brief, site *Toledo Bar Assn. v. Lowden*, 105 Ohio St.3d 377, 2005-Ohio-7162. In *Lowden*, the Respondent was found to have engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; engaged in conduct prejudicial to the administration of justice; neglected an entrusted legal matter; intentionally failing to carry out a contract of employment; and failed to cooperate in a disciplinary investigation. In addition, Lowden also had a prior disciplinary suspension (interim suspension for failure to have paid child support). The Court held a two-year, stayed suspension was appropriate. The evidence presented by the parties of Respondent's conduct in this matter certainly does not rise to the behavior found to have occurred in *Lowden*. The panel also notes *Columbus Bar Assn. v. Watson*, 106 Ohio St.3d 298, 2005-Ohio-4983, and *Cuyahoga Cty. Bar Assn. v. Ballou*, 109 Ohio St.3d 152, 2006-Ohio-2037, as additional examples of cases with multiple offensives where the Court held a stayed suspension was appropriate. Given the benchmark set in *Lowden*, and the additional cited case law, the panel concludes Relator's submitted sanction of one-year suspension, all stayed, upon certain conditions is the appropriate sanction, despite the additional rule violation found by the panel. The conditions of the stayed suspension recommended by the panel are:

A. Holda shall contact OLAP and sign a contact with OLAP and shall follow its recommendations during the period of her stayed suspension;

B. A monitor shall be chosen by the Relator to monitor Holda for the length of the stayed suspension;

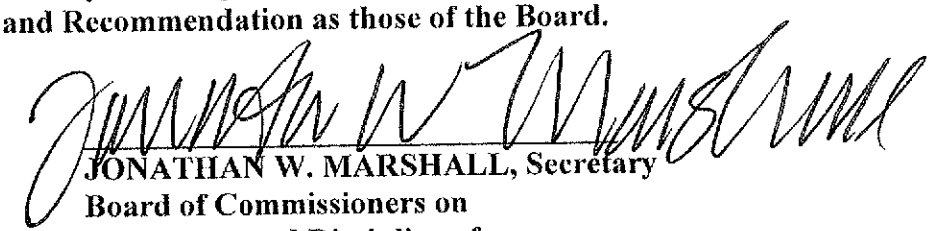
C. Holda shall attend a Law Office Management Program/Seminar during her stayed suspension;

D. Holda shall refund $1,000.00 to Schoonover and $1,500.00 to Vilt.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 9, 2009. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the panel and recommends that the Respondent, Sheri Lynn Holda, be suspended from the practice of law for a period of one year with the entire one year stayed upon the four conditions contained in the panel report. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.



JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCE AND DISCIPLINE OF
THE SUPREME COURT OF OHIO

IN RE: COMPLAINT AGAINST SHERI L. HOLDA Registration No.: 0073993 P.O. Box 432 Green, Ohio 44232 RESPONDENT, AKRON BAR ASSOCIATION 57 South Broadway Street Akron, Ohio 44308 RELATOR.	))))))))))))))))	Case No.: 09-005 **STIPULATIONS**

Now come the respective parties hereto, both being represented by their undersigned counsels of record, and hereby enter into the following Stipulations:

1. The Akron Bar Association (hereinafter referred to as "the ABA") is a Certified Grievance Committee under Gov. Bar R. V(3)(C).

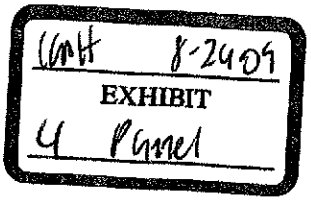
2. Sheri L. Holda (hereinafter referred to as "HOLDA") is an attorney licensed to practice law in Ohio, Registration No. 0073993, with a business address of P.O. Box 432, Green, Ohio 44232.

3. Holda received a public reprimand in *Akron Bar Association v. Holda* (2006), 111 Ohio St.3d 418.

4. Richard Schoonover (hereinafter referred to as "Schoonover") was a client of Holda.

5. Schoonover and Holda signed a written fee agreement on December 20, 2007.

CAMPBELL
LAW OFFICE
2717 Manchester Road
Akron, Ohio 44319
Phone: (330) 745-2422
Fax: (330) 745-2447



6. On December 20, 2007, Schoonover paid a retainer fee of $1,000.00 to Holda.

7. On December 24, 2007, Holda deposited Schoonover's check into her IOLTA account.

8. On February 1, 2008, Holda withdrew Schoonover's entire retainer.

9. Holda turned over Schoonover's file to Attorney Segedy on September 30, 2008.

10. Holda has voluntarily agreed to refund all of Schoonover's retainer of $1,000.00 to Schoonover by ~~November~~ OCTOBER 1, 2009. JMC for SLH

11. Holda never filed the *Estate of John D. Schoonover, Jr.* with the Summit County Probate Court. Holda agrees that her conduct amounts to a failure to act with reasonable diligence and promptness in representing a client which is violation of Rule 1.3 of the Ohio Rules of Professional Conduct.

12. Robin Vilt (hereinafter referred to as "VILT") was a client of Holda.

13. Vilt and Holda signed a fee agreement on June 30, 2008.

14. On June 30, 2008, Vilt paid a retainer fee of $1,500.00 to Holda.

15. On June 30, 2008, Holda deposited Vilt's check into her IOLTA account.

16. On or about June 30, 2008, Holda filed a Motion for Placement with Paternal Grandmother and a Motion for Legal Custody to Paternal Grandmother with the Portage County Juvenile Court on behalf of Vilt.

17. On or about July 1, 2008, Holda was notified by the Court that a Status Hearing on the matter was scheduled for August 1, 2008 at 3:00 p.m.

18. Holda notified Vilt of the date and time of the Status Hearing.

19. Holda did not appear at the Status Hearing on August 1, 2008 until

CAMPBELL
LAW OFFICE
717 Manchester Road
Akron, Ohio 44319
Phone: (330) 745-2422
Fax: (330) 745-2447

approximately 3:40 p.m.

20. Holda did not call either the Court or Vilt to advise them that she would be arriving late for the Status Hearing.

21. ~~On August 1, 2008, before~~ AFTER leaving the Juvenile Court building, Holda met with Vilt and agreed that she would file objections to the Magistrate's Decision and not charge Vilt any additional fees.

22. On August 1, 2008, Holda obtained a copy of the Magistrate's Decision, which was actually a Magistrate's Order, before leaving the Juvenile Court.

23. The following Notice appeared on the bottom of the Magistrate's Order that Holda obtained on August 1, 2008:

> NOTICE: Pursuant to Juvenile Rule 40, a party may file a written motion to set aside a Magistrate's Order within 10 days of filing and a written objection to a Magistrate's Decision within 14 days of filing. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Juv. R. 40(D)(3)(a)(ii), in that decision unless the party timely and specifically objects to that finding as required by either Civ. R. 53 (E)(3) or Juv. R. 40 (D)(3).

24. Pursuant to Juv. R. 40 and Ohio Civ. R. Proc. 53 (D)(2)(b), Holda had ten (10) days to file a written motion to set aside the Magistrate's Order that was filed on August 1, 2008.

25. Holda filed objections to the Magistrate's Order on August 18, 2008. Holda agrees that her conduct amounts to a failure to act with reasonable diligence and promptness in representing a client which is a violation of Rule 1.3 of the Ohio Rules of Professional Conduct.

CAMPBELL
LAW OFFICE
2717 Manchester Road
Akron, Ohio 44319
Phone: (330) 745-2422
Fax: (330) 745-2447

26. Holda withdrew Vilt's entire $1,500.00 retainer on August 8, 2008.

27. Holda has voluntarily agreed to refund all of Vilt's retainer of $1,500.00 to Vilt by ~~November~~ October 1, 2009.

These stipulations have been knowingly and voluntarily entered into between all of the undersigned parties and their respective counsels of record.

APPROVED BY:

JAMES M. CAMPBELL (0004733)
Attorney for Akron Bar Association
2717 Manchester Road
Akron, OH 44319
P: (330) 745-2422
F: (330) 745-2447

PATRICIA A. VANCE (0015381)
Attorney for Akron Bar Association
544 White Pond Dr., Suite E
Akron, OH 44320
P: (330) 836-9358
F: (330) 836-8029

DAVID FRIEDMAN (0003317)
Attorney for Akron Bar Association
Hardesty, Kaffen & Zimmerman
520 S. Main Street, Suite 500
Akron, OH 44311-1010
P: (330) 762-7477
F: (330) 762-8059

DENNIS J. BARTEK (0000592)
Attorney for Respondent, Sheri L. Holda
2300 East Market Street, Suite E
Akron, OH 44312
P: (330) 784-8580
F: (330) 784-8434

PETER T. CAHOON, # 0007343
Co-Counsel for Respondent

SHERI HOLDA,
Respondent

CAMPBELL
LAW OFFICE
2717 Manchester Road
Akron, Ohio 44319
Phone: (330) 745-2422
Fax: (330) 745-2447

KMH 8/24/09
EXHIBIT
5 Panel

Stipulations with regard to Relator's Recommendations

1. Relator recommends a suspension of 1 year.
2. Relator does not oppose the entire suspension be stayed provided that the panel imposes the following conditions:
   A. Holda shall contact OLAP and signs a contract with them ~~to~~ and shall follow their recommendations during the period of her STAYED suspension.
   B. Holda shall follow through with the recommendations as contained in her BVR assessment and report ~~during~~ for the length of her stayed suspension.
   C. A monitor shall be chosen by the ~~Supreme Court of Ohio~~ Board of Commissioners to monitor Holda for the length of her STAYED suspension. The relator recommends that one of the following persons to act as her monitor: Attorney Bev Rose, Attorney Barbara Mushkat, and Attorney Russ Smith.
   D. Holda shall attend a Law Office Managment Program/Seminar during her STAYED suspension.

E. Holda shall refund $1,000.00 to Schoonover and $1,500.00 to Vilt by no later than October 1, 2009.