

BEFORE THE WEST VIRGINIA
BOARD OF ACCOUNTANCY

IN THE MATTER OF CARROLL D. SIMPKINS
C.P.A. CERTIFICATE AND LICENSE NO. 187

CONSENT AGREEMENT

Come now Carroll D. Simpkins and the West Virginia Board of Accountancy (hereinafter Board), by counsel, Kelli D. Talbott, Assistant Attorney General, for the purpose of agreeing to what disciplinary action should be taken against Carroll D. Simpkins, Certified Public Accountant Certificate and License No. 187, by the Board pursuant to W. Va. Code § 30-9-1 et seq. As reflected in this document, the parties have reached an agreement as to the proper disposition of this matter, and the Board, approving said agreement, does hereby find and order.

FINDINGS OF FACT

1. Carroll D. Simpkins holds Certified Public Accountant Certificate and License No. 187, issued by the Board.
2. Carroll D. Simpkins owns and operates the accounting firm known as "Simpkins and Associates" of Beckley, West Virginia.
3. In September 1989, a complaint was filed with the American Institute of Certified Public Accountants (hereinafter AICPA) by the United States Department of Education alleging that the firm of "Simpkins and Associates" lacked independence to perform an audit of student financial assistance programs at Beckley College, Beckley, West Virginia, for fiscal year July 1, 1987 through June 30, 1988; and that further, required audit steps were not documented, including, but not limited to, a study and evaluation

of internal accounting and administrative controls; and that a finding of noncompliance was not reported and that the working papers were not signed and dated and did not show purpose, source, scope and conclusions; and an engagement letter was not used.

4. Mr. Simpkins was a member of the board of trustees of Beckley College when he accepted the engagement on behalf of his firm to perform the above-referenced audit. Further, he continued to be a member of such board when the audit was performed and was a member for the period of time covered by the historical financial statements compiled during such audit.

5. The board of trustees of Beckley College was described on financial statements as setting overall operating policy for the college, including approving large financial commitments.

6. In June 1990, the Governmental Technical Standards Subcommittee of the AICPA voted to charge Mr. Simpkins with a violation of Rule 101, as interpreted by Ethics Interpretations 101-1 B.1 and 101-9, of the AICPA Code of Professional Conduct. Such Rule and its Ethics Interpretations concern the issue of independence.

7. Such charges were referred to the Professional Ethics Executive Committee of the AICPA, which in turn voted to refer the matter to a Joint Trial Board for a hearing. Pursuant to a letter on "Simpkins & Associates" letterhead signed by Mr. Burkard and addressed to the Board, "Simpkins and Associates" agreed to allow the Board to review and act upon the final decision made by the

AICPA regarding the complaint filed by the United States Department of Education referred to in paragraph number 3 above.

8. The AICPA statement of charges against Mr. Simpkins reads in pertinent part as follows:

Carroll D. Simpkins, either as sole proprietor or partner of Simpkins & Associates violated Rule 101, as interpreted by Ethics Interpretations 101-9 and 101-1 B.1, of the AICPA and West Virginia Society of CPA's Code of Professional Conduct by being a member of the Board of Directors of Beckley College, Inc., an audit client of Simpkins & Associates, during the period of the audit engagement and at the time of expressing an opinion in the auditor's reports on the student financial assistance programs administered by the College.

9. Rule 101 referenced above provides that "[a] member in the practice of public accounting shall be independent in the performance of professional services as required by standards promulgated by bodies designated by Council." The Professional Ethics Executive Committee is deemed to be such a body and it has adopted Interpretation 101-1 B.1 referenced above, which provides that "[i]ndependence shall be considered to be impaired if . . . [d]uring the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, a member or a member's firm was connected with the enterprise, as a promoter, underwriter or voting trustee, as a director or officer, or in any capacity equivalent to that of a member of management or of an employee." Further, such committee has adopted Ethics Interpretation 101-9 which defines certain terms used in Ethics Interpretation 101.

10. On January 14, 1991, Mr. Simpkins appeared with counsel before the Joint Trial Board of the AICPA to answer to such ethics charges brought against himself, a member of the AICPA and the West Virginia Society of CPAs, and John L. Burkard, an associate in his firm and also a member of the AICPA and the West Virginia Society of CPAs.

11. After hearing all evidence, the Joint Trial Board found, by unanimous vote, that Mr. Simpkins was guilty of violating Rule 101 of the AICPA Code of Professional Conduct.

12. The Joint Trial Board further chose to admonish Mr. Simpkins for the above-referenced violation. Such admonishment took the form of publication of Mr. Simpkins' name and a report of his case in designated AICPA literature.

13. Mr. Simpkins acknowledges that W. Va. Code § 30-9-12(c) provides that the Board may revoke or suspend any certificate or registration and may refuse to issue, or refuse to renew, any license, for the following cause: "[v]iolation of a rule of professional conduct promulgated by the board under the authority granted by this article". Specifically, Mr. Simpkins acknowledges that his conduct violated § 1-1-21.1 of the Board's Rules of Professional Conduct which states in pertinent part that:

Neither a certified public accountant or public accountant, nor a firm of which he is a partner, shall express an opinion on financial statements of any enterprise unless he and his firm are in fact independent with respect to such enterprise. . . . A certified public accountant or public accountant or public accountant, before expressing his opinion on financial statements, has the responsibility of assessing his relationships with an enterprise to determine whether, in the circumstances, he might expect his opinion to be

considered independent, objective and unbiased by one who has knowledge of all the facts. A certified public accountant or public accountant will not be considered independent, for example, with respect to an enterprise if he, or one (1) of his partners, . . . (b) during the period of professional engagement, at the time of expressing his opinion or during the period covered by the financial statements, was connected with the enterprise as a promoter, underwriter, voting trustee, director, officer or key employee.

CONCLUSIONS OF LAW

1. The Board concludes that the Findings of Fact set forth above support the sanction of disciplinary action pursuant to W. Va. Code § 30-9-1 et seq., pertaining to the practice of public accounting in this state.

2. Specifically, W. Va. Code § 30-9-12(c), states that a licensee may be disciplined for "[v]iolation of a rule of professional conduct promulgated by the board under authority of this article". Accordingly, the Board concludes that disciplinary action is warranted pursuant to the Board's Rules of Professional Conduct, promulgated under W. Va. Code § 30-9-1 et seq. as follows: Section 1-1-21.1 of such Rules mandates that a CPA be independent with respect to an enterprise when expressing an opinion on financial statements of such enterprise. Further a CPA is not considered to be independent with respect to an enterprise if he or a partner, "during the period of his professional engagement, at the time of expressing an opinion or during the period covered by the financial statements, [is] connected with the enterprise as a promoter, underwriter, voting trustee, director, officer or key employee." Because Mr. Simpkins was a member of the board of

trustees of Beckley College at all times relevant to the audit performed by "Simpkins & Associates" on such college, Mr. Simpkins' conduct constitutes a violation of this Rule.

CONSENT

Carroll D. Simpkins, holder of Certified Public Accountant Certificate and License No. 187, by affixing his signature hereon, agrees to the following:

1. He acknowledges that he is aware of his option to retain legal counsel and to be represented by legal counsel at a formal hearing before the Board.

2. He intelligently and voluntarily waives his right to a formal hearing before the Board in this matter.

3. He acknowledges that he is fully aware that without his consent, no legal action can be taken against him by the Board, except pursuant to W. Va. Code § 30-9-1 et seq. and other applicable law.

4. He consents to the entry of the following order affecting his license and certificate issued by the Board.

ORDER

On the basis of the foregoing, the Board hereby orders that Carroll D. Simpkins, holder of C.P.A. Certificate and License No. 187 shall submit to the following:

1. Mr. Simpkins shall participate in eight (8) hours of approved Continuing Professional Education on the topic of professional ethics. Such hours must be completed by December 31, 1991, the costs of taking such hours shall be borne by Mr. Simpkins

and/or "Simpkins and Associates", and a certificate, invoice, sworn affidavit, or other comparable documentation evidencing completion of such hours must be provided to the Board on or before the above-referenced date.

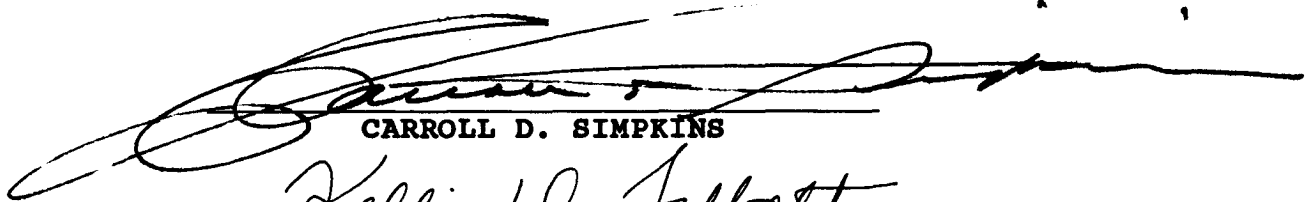
2. Mr. Simpkins shall cause his firm, "Simpkins and Associates", to undergo a voluntary peer review by an appropriate reviewer or reviewing entity. Such review shall be completed by December 31, 1991 and the costs of undergoing such review shall be borne by Mr. Simpkins. A copy of the report and/or findings issued as a result of such review shall be submitted to the Board on or before December 31, 1991. Furthermore, the Board shall have the right to review the work papers and other pertinent documents supportive to the report and/or findings issued by the reviewer.

3. Mr. Simpkins shall not violate the provisions of W. Va. Code § 30-9-1 et seq. or the provisions contained in the Board's Legislative Rules promulgated under authority of W. Va. Code § 30-9-1 et seq.

4. If the Board is presented with any evidence from any source proving or tending to prove that Mr. Simpkins is not in compliance with the terms of this ORDER, the Board shall immediately notify him of the specific nature of the charges, and schedule a hearing regarding further disciplinary action against his certificate and license. Such hearing is to be held within ten days of notification. Mr. Simpkins hereby waives the provisions of W. Va. Code § 30-1-1 et seq., requiring 30 days notice prior to hearing.

Entered this 18 day of October, 1991.

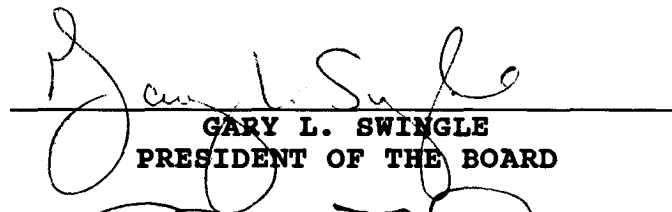
Agreed to:



CARROLL D. SIMPKINS



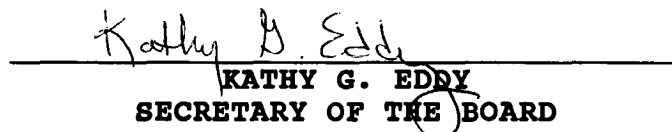
KELLI D. TALBOTT
ASSISTANT ATTORNEY GENERAL
COUNSEL FOR THE BOARD



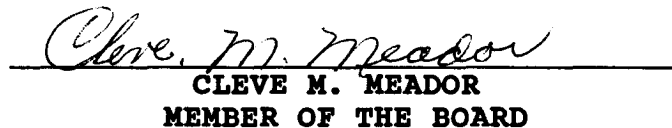
GARY L. SWINGLE
PRESIDENT OF THE BOARD



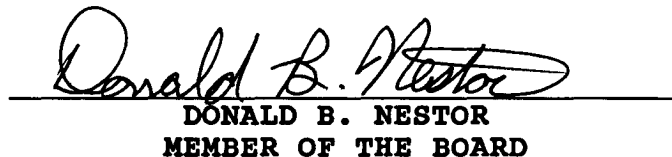
CHARLES R. SIGMAN
VICE PRESIDENT OF THE BOARD



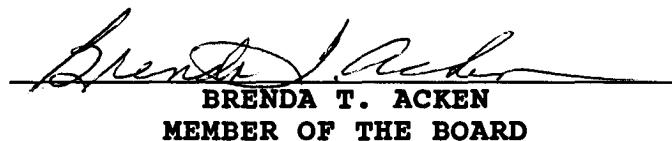
KATHY G. EDDY
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BRENDA T. ACKEN
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