

FILED

JUL 14 1989

Handwritten signature
CLERK OF THE
SUPREME COURT OF APPEALS
SUPREME COURT OF WEST VIRGINIA
OF WEST VIRGINIA

Per Curiam:

Committee on Legal Ethics of the
West Virginia State Bar

No. 19008 vs.

James Wilson Douglas

This is an attorney disciplinary proceeding commenced by the Committee on Legal Ethics against James Wilson Douglas. The Committee found that Douglas violated DR 7-102(A) (1) and (2) by knowingly filing a frivolous and vexatious lawsuit. The Committee recommends a six-month suspension from the practice of law, and the assessment of costs associated with the proceedings regarding this charge. We adopt the findings and recommendations of the Committee.

The facts of this case appear fully in part II of our opinion in Committee on Legal Ethics v. Douglas, ___ W. Va. ___, ___, 370 S.E.2d 325, 333 (1988). In that case we remanded two ethics violation charges to the Committee for further consideration. The Committee chose not to pursue one count, however, at our direction, reconsidered the previously dismissed "stud fee" case under DR 7-102(A) (1) and (2). Neither party sought to supplement the record on the matter; therefore, those facts contained in Douglas, ___ W. Va. at ___, 370 S.E.2d at 333, were presented to a newly appointed hearing subcommittee.

The hearing subcommittee presented its report, which was adopted by the full hearing panel. The Committee found that Douglas knew or should have known "that the purpose of his

conduct [was] to harass or injure another." In support of its conclusion that Douglas subjectively and objectively violated the rule in filing the frivolous lawsuit, the Committee found that Douglas "filed the 'stud fee' suit without sufficient information to support its allegations; the paternity action against his client was still pending; the parties lived in a small, rural town, where [the mother] taught school."

As a result of its finding that Douglas filed a frivolous lawsuit, the Legal Ethics Committee asks this Court to suspend his license to practice for six months and assess him with the costs associated with the disciplinary procedures invoked to prosecute this charge.

"Absent a showing of some mistake of law or arbitrary assessment of the facts, recommendations made by the State Bar Legal Ethics Committee . . . are to be given substantial consideration.' Syllabus Point 3, in part, In Re Brown, ___ W. Va. ___, 273 S.E.2d 567 (1980)." Syl. pt. 2, Committee on Legal Ethics v. White, ___ W. Va. ___, 349 S.E.2d 919 (1986).

In syllabus point 1 of Committee on Legal Ethics v. Lilly, ___ W. Va. ___, 328 S.E.2d 695 (1985), we noted that when an attorney presents mitigating facts and circumstances surrounding allegations of an ethics violation, the Court will take these factors into consideration when determining the appropriate disciplinary sanction.

In his brief in response to the Committee's recommendation, Douglas offers no defense to the substantive matters currently before the Court, but instead readdresses certain procedural issues previously considered by the Court in syllabus point 3 of Committee on Legal Ethics v. Douglas, ___ W. Va. ___, 370 S.E.2d 325 (1988), petition for rehearing denied,

May 18, 1988; second motion to recuse the members of this Court denied March 23, 1989. Therefore, we decline to address his contentions in regard to those issues.

As noted in syllabus point 4 of Douglas, supra, a violation of DR 7-102(A)(1) and (2) may, in certain circumstances, result in disbarment. We, therefore, adopt the findings and recommendations of the Committee as the Committee's findings are fully supported by the record and no mitigating factors for determining the appropriate disciplinary sanction were presented.

Accordingly, it is Adjudged and Ordered that the recommendation of the Committee on Legal Ethics is adopted and the attorney's license to practice law is suspended for six months and the attorney is assessed with the costs associated with the proceedings regarding this charge.