

367 S.E. 2d 262 1981
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STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 31st day of March, 1988, the following order was made and entered.

The Committee on Legal Ethics of
The West Virginia State Bar, Complainant

vs.) No. 18226

M. Zelene Harman, a member of The West Virginia
State Bar, Respondent

The Court having maturely considered the verified complaint praying for a public reprimand of M. Zelene Harman, together with the Original Report of the The Committee on Legal Ethics, as provided by Part D, Article VI of the By-Laws, Rules and Regulations of the West Virginia State Bar, with the transcript of the formal hearing held before the Committee on Legal Ethics on November 23, 1987, the Findings and Recommendations of said Committee, and the various pleadings and exhibits filed with the Committee; the rule awarded thereon; the response of the respondent; and upon the brief of counsel on behalf of the The West Virginia State Bar, is of opinion for reasons stated in writing and filed with the record that the respondent, Marla Zelene Harman, has been guilty of violating DR1-102(A)(4), (5), and (6) of the Code of Professional Responsibility, and therefore, should be publicly reprimanded.

Accordingly, it is therefore Adjudged and Ordered that the respondent, Marla Zelene Harman, be, and she is hereby publicly reprimanded.

It is further Ordered that the respondent reimburse the Committee on Legal Ethics in the amount of \$298.22, for the actual and necessary expenses incurred in the investigation and hearing of this matter.

The syllabus of points adjudicated, prefixed to the written opinion prepared Per Curiam, was concurred in by Chief Justice McHugh, and Justices Neely, Miller, McGraw, and Brotherton.

Service of a copy of this order upon the respondent aforesaid, by certified mail, return receipt requested, shall constitute sufficient notice of the contents hereof.

A True Copy

Attest *Amiel J. Remy*
Clerk, Supreme Court of Appeals

TAXATION OF COSTS

18226 IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

The Committee on Legal Ethics of the West Virginia State Bar,
Complainant vs. M. Zelene Harman, a Member of the WV State Bar, Resp.

Relator

Clerk Supreme Court of Appeals	\$
Printing Record	
Court Reporter for Transcript	
Service fee	
Order of Publication	
Attorneys fee	

TOTAL	\$
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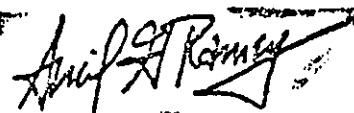
Respondent

Clerk Supreme Court of Appeals	\$
Printing Record	
Service fee	
Damages, Code Chap. 58, Art. 5, Sec. 27	
Attorneys fee	
Cost of Legal Ethics Proceeding	298.22

TOTAL	\$ 298.22
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This 11th day of May, 1988.

Attest:



Clerk Supreme Court of Appeals

NO. 18226

COMMITTEE ON LEGAL ETHICS OF THE
WEST VIRGINIA STATE BAR

V.
MARLA ZELENE HARMAN

Disciplinary Proceeding

Public Reprimand

Per Curiam

1. "In a court proceeding prosecuted by the Committee on Legal Ethics of the West Virginia State Bar for the purpose of having suspended the license of an attorney to practice law for a designated period of time, the burden is on the Committee to prove by full, preponderating and clear evidence the charges contained in the complaint filed on behalf of the committee." Syllabus Point 1, Committee on Legal Ethics v. Lewis, 156 W.Va. 809, 192 S.E.2d 312 (1973).

2. "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." In Re Brown, ___ W.Va. ___, 273 S.E.2d 567 (1980).

Per Curiam:

This action is a disciplinary proceeding instituted by the Committee on Legal Ethics of the West Virginia State Bar (hereinafter the Committee) against Marla Zelene Harman, a member of the Bar. The Committee has recommended that this Court publicly reprimand Ms. Harman (hereinafter the respondent).

The Committee has charged the respondent with violating DR1-102(A) (4), (5), and (6) of the West Virginia Code of Professional Responsibility which provides:

DR1-102 - Misconduct - (A) a lawyer shall not: (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; (5) Engage in conduct that is prejudicial to the administration of justice; (6) Engage in any other conduct that adversely reflects on his fitness to practice law.

The Committee alleges that the respondent conspired with a client who was incarcerated to obtain a "dime bag" of marijuana for use by the client, and that in so doing, the respondent was guilty of professional misconduct reflecting on her fitness to practice law in violation of DR1-102(A) (6).

We note initially that we have traditionally placed the burden on the Committee to prove its charges against an attorney by full, preponderating, and clear evidence. As we stated in Syllabus Point 1 of Committee on Legal Ethics v. Lewis, 156 W.Va. 809, 192 S.E.2d 312 (1973):

"In a court proceeding prosecuted by the Committee on Legal Ethics of the

West Virginia State Bar for the purpose of having suspended the license of an attorney to practice law for a designated period of time, the burden is on the Committee to prove by full, preponderating and clear evidence the charges contained in the complaint filed on behalf of the committee."

See also, Syllabus Point 1, Committee on Legal Ethics v. Tatterson, ___ W.Va. ___, 319 S.E.2d 381 (1984); Syllabus Point 1, Committee on Legal Ethics v. Pence, ___ W.Va. ___, 216 S.E.2d 236 (1975).

From a review of the record and exhibits, we find that the Committee has met this burden. There are no major conflicts in the evidence. We said in Syllabus Point 3, in part, of In Re Brown, ___ W.Va. ___, 273 S.E.2d 567 (1980) as follows:

"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."

Without dispute, the facts show that in the course of an attorney-client visit at the Marion County jail, the respondent received two five-dollar bills from her inmate client for the ostensible purpose of obtaining a "dime-bag" of marijuana for the client. Although the respondent may have later realized that she could not agree to the client's request, she did not return the funds to the client. As a result of a telephone call with the client a few days later, the respondent was apparently permitted to retain the funds with a view to possibly obtaining the marijuana. While we do not address the legality of the matter in this opinion, this telephone call was apparently recorded. There is no

evidence to indicate that the respondent ever made any serious effort to purchase the marijuana.

The respondent was arrested several days later upon a felony warrant that charged her under W.Va. Code, 61-10-31 [1971], with conspiring to deliver marijuana. On May 27, 1986, pursuant to a written plea bargain, the respondent entered a guilty plea in the Circuit Court of Marion County to an information charging her with conspiring to possess marijuana ". . . in violation of West Virginia Code section 60A-4-401(c) . . ." This information was based upon the misdemeanor provisions of W.Va. Code, 61-10-31 [1971]. On August 25, 1986, the Circuit Court of Marion County ordered the respondent to pay a fine in the sum of \$500.00 and costs in the sum of \$165.00 and ordered her placed on probation for one year. We note that the respondent has successfully completed her probation.

In the aftermath of these circumstances, the respondent voluntarily removed herself from the practice of law for a year or more. During this period, the respondent returned to her parent's home in Pendleton County where she worked on their farm and became involved in certain charitable activities. The respondent has recently resumed a law practice in Franklin, and the record suggests she is in good standing with the Bench and Bar in that area. The record would also suggest that the respondent is more than contrite about her misconduct and regrets the nature of her misdeeds.

We believe that while the respondent has taken serious steps to improve her professional judgment, the foregoing facts show professional misconduct warranting a public reprimand. Furthermore, in addition to being publicly reprimanded, we believe the respondent should pay the costs of this proceeding. Costs have been assessed in similar cases in the past. See, Committee on Legal Ethics v. E. Dennis White, Jr., ___ W.Va. ___, 349 S.E.2d 919 (1986).

We conclude that the respondent's actions with her client involve a serious violation of the Code of Professional Responsibility. We defer to the committee's recommendation that respondent need not be suspended or disbarred and agree to the Committee's recommendation of a public reprimand as the appropriate sanction. The respondent is also ordered to reimburse the Committee for the actual and necessary expenses incurred by it in connection with this proceeding.

Public Reprimand.