

STATE OF WEST VIRGINIA
IN THE SUPREME COURT OF APPEALS
IN VACATION

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

vs.) No. 18577

James H. Hearst, an active member of
The West Virginia State Bar, Respondent

On a former day, to-wit, July 25, 1988, came the Committee on Legal Ethics of The West Virginia State Bar, by Jack M. Marden and Cynthia Santoro Gustke, its attorneys, and presented to the Court its recommendation that this Court accept respondent's voluntary resignation as an active member of The West Virginia State Bar.

Upon consideration whereof, the Court is of opinion and does hereby accept the voluntary resignation of James H. Hearst, as an active member of The West Virginia State Bar.

Accordingly, it is therefore Adjudged and Ordered that the license and authority of the respondent, James H. Hearst, to practice law in the State of West Virginia, be, and the same is hereby revoked and terminated until further order of this Court under the condition that he shall not be permitted to petition for reinstatement for a period of two years from the date of this order.

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

DONE IN VACATION of the Supreme Court of Appeals, this
31st day of August, 1988.

Thomas J. McHugh, Chief Justice

Darrell V. McGraw, Jr., Justice

Thomas B. Miller, Justice

William T. Brotherton, Jr., Justice

Received the foregoing order this 31st day of August,
1988, and entered the same in Order Book 98.

Ancil G. Ramey
Clerk, Supreme Court of Appeals

A True Copy

Attest *Ancil G. Ramey*
Clerk, Supreme Court of Appeals

FILED

APR 21 1983

Amie R. Pusey
CLERK OF THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Per Curiam

Committee on Legal Ethics of The
West Virginia State Bar

No. 18090 v.

James H. Hearst

This is a disciplinary proceeding instituted by the Committee on Legal Ethics of the West Virginia State Bar against James H. Hearst, the respondent, a member of the Bar. The Committee has recommended that this Court publicly reprimand Mr. Hearst based upon findings that he violated the Code of Professional Responsibility by neglecting three separate cases entrusted to him by clients. The original charges in this case were filed at separate times.

A subcommittee of the Committee on Legal Ethics made the initial findings of fact and conclusions of law. The full Committee adopted those findings and conclusions. Those findings of fact, generally, are as follows:

I

In 1985 the respondent was retained by Edna Snyder in her capacity as administratrix of the estate of Sherman Willie, her father, who died intestate in 1981. Mrs. Snyder paid the respondent \$800.00 when she hired him. The estate was solvent with assets sufficient to pay the debts and expenses of the administration of the estate. The testimony about whether Mrs. Snyder visited the respondent's office

before and after a change in location was conflicting. The respondent took no action to settle the estate of Sherman Willie, failed to communicate with his client, and admitted that he had never settled an estate by himself during the course of his law practice.

II

Respondent was appointed to represent Frederick Martin on a charge of first degree sexual assault. Although the respondent attempted to withdraw from the case prior to trial his motion to do so was denied. Mr. Martin was convicted on August 31, 1982 and was sentenced to an indeterminate term of from ten to twenty years in the penitentiary. The respondent was then appointed as appellate counsel and thereafter filed a notice of intent to appeal and requested a copy of the transcript. Approximately two months after his conviction Mr. Martin informed the respondent that he wanted to hire private counsel to perfect his appeal. Three months later the respondent wrote to Mr. Martin reiterating his understanding that he was to be replaced as appellate counsel and informing his client of the eight-month appeal period. When Mr. Martin requested his transcript from the circuit court in March 1983, Judge Fox informed him that the papers he sought from the court had been provided to Mr. Hearst "who is proceeding with your appeal before the West Virginia Supreme Court of Appeals."

The respondent did not inform the Court that he no longer represented Mr. Martin in his appeal nor did he file

a motion to withdraw as appellate counsel. Respondent allowed the appeal period to run without perfecting what he testified was a meritorious appeal.

III

The respondent was retained by Portia Farhatt to file a personal bankruptcy petition for her and also for her closely held corporation, Porsha's Pizza Inc. Ms. Farhatt had initially employed the respondent's former law partner, Rodney Merrifield, to file the bankruptcies. After he was elected to the bench, Mr. Merrifield told Ms. Farhatt that the respondent would be taking over her case. In April of 1985 Ms. Farhatt met with the respondent to discuss the bankruptcies and on May 6, 1985 she paid him \$200.00 and signed the personal petition. Neither the personal nor the corporate petition was ever filed.

Ms. Farhatt's attempts to contact the respondent were unsuccessful as was her request that her file be returned to her along with a refund of the \$200.00. Finally, with the assistance of the State Bar the file was returned.

IV

The respondent represented Ronald Tanner in a contested divorce case. Mr. Tanner had a difficult time communicating with the respondent and on several occasions drove from New Martinsville to the respondent's office in

Fairmont for scheduled appointments which the respondent failed to keep. An order pertaining to a hearing on June 11, 1985 was not entered until September 9, 1985.

V

The respondent is charged with violating DR 6-101(A)(3) of the Code of Professional Responsibility which states: "(A) A lawyer shall not: (3) Neglect a legal matter entrusted to him."

In syllabus point 2 of Committee on Legal Ethics v. Daniel, 160 W.Va. 388, 235 S.E.2d 369 (1977), we stated:

In attorney disciplinary proceedings based on a complaint charging professional misconduct and prosecuted by The Committee on Legal Ethics of the West Virginia State Bar for publicly reprimanding the attorney and for suspending the license of the attorney to practice law, the burden is on the committee to prove the charges contained in the complaint by full, clear and preponderating evidence.

The Committee alleges that the respondent's failure to begin settlement of the Willie Estate, his failure to file a criminal appeal on behalf of Frederick Martin, and his failure to file the bankruptcy petitions for Portia Farhatt, as well as his failure to communicate, show a pattern and practice of neglect which justifies public reprimand. We are of the view that the Committee has met its burden of proving the charges against the respondent in this case.

Accordingly, it is Adjudged and Ordered that a public reprimand is an appropriate sanction in this disciplinary proceeding.

In accordance with Article VI, Section 20, By-Laws, West Virginia State Bar, the respondent will bear costs in this proceeding in the amount of \$500.00.