

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 2nd day of July, 1987, the following order was made and entered, to-wit:

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

17562

vs.

Charles E. Pettry, Jr., a member of West Virginia  
State Bar, Respondent

The Court having maturely considered the verified complaint praying for public reprimand of Charles E. Pettry, Jr., together with the Original Report of 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 March 8, 1986, the Findings and Recommendations of said Committee, and the various pleadings and exhibits filed with the Committee; the rule awarded thereon; and brief of counsel on behalf of the Committee on Legal Ethics thereon, today handed down a prepared order administering a public reprimand to the respondent, Charles E. Pettry, Jr., for violation of Disciplinary Rules 7-101(A) (1) and (2) of the Code of Professional Responsibility, and ordering him to reimburse the Committee on Legal Ethics the sum of Six Hundred Twenty-Three Dollars and Fifty-Eight Cents (\$623.58), for its costs incurred in this proceeding.

A True Copy

Attest:

  
Clerk, Supreme Court of Appeals

FILED

JUL 2 1987

*Amelia Ramsey*  
CLERK OF THE  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Per Curiam:

The Committee on Legal Ethics of  
The West Virginia State Bar

No. 17562 vs.

Charles E. Pettry, Jr.

This is a disciplinary proceeding instituted by the Committee on Legal Ethics of the West Virginia State Bar against Charles E. Pettry, Jr., the respondent, a member of the Bar. The Committee has recommended that this Court publicly reprimand Mr. Pettry based upon findings that he, in violation of the Code of Professional Responsibility, failed to seek the lawful objectives of his clients through reasonably available means and failed to carry out a contract of employment. The Committee's findings emanated from a hearing that investigated the respondent's representation of Betty Miller and Ilene and Ernest Miller. After examining the record, we conclude that the respondent did violate the Code of Professional Responsibility and that a public reprimand is an appropriate sanction.

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:

The respondent, a licensed member of the West Virginia State Bar, was retained in 1976 by Betty Miller and

Ilene and Ernest Miller to represent their interests in selling a parcel of real estate owned by the estate of Corbet Craddock. The real estate is located in Kanawha County. The respondent was not retained to represent the Craddock estate at this time. Craddock died in 1974, and was the father of Betty Miller and Ilene Miller. In 1980, following a complaint instituted against him by Ilene and Ernest Miller, the respondent undertook to offer advice and assistance to Ilene and Ernest Miller in matters related to the transfer of shares of common stock in General Motors and E. I. duPont de Nemours & Company (Dupont). The stock was owned by the Craddock estate. The respondent provided assurances to the Millers and to the Committee on Legal Ethics that he would pursue the lawful objectives of Ilene and Ernest Miller in effecting the stock transfer. Based upon these representations, the charges were dropped in 1981. The respondent did not receive a separate fee for the undertaking of offering advice and assistance to Ilene and Ernest Miller to effect the stock transfer.

The matter was reopened, however, in March, 1985, because the respondent had not complied with his prior representations, despite repeated assurances that he would do so. General Motors required a release from the State Tax Department before transferring the stock. Neither the required appraisal nor West Virginia Inheritance Tax Return was filed, however, with the Tax Department. Consequently, the General Motors stock transfer was not effected, and remained in the name of Betty Miller, Ilene Miller's sister, who was the administratrix of the Craddock estate. Betty Miller signed the General Motors dividend checks over

to Ilene and Ernest Miller as she received them. The Dupont stock remained in the names of the respondent. Dividend checks on the Dupont stock were periodically picked up by Ilene and Ernest Miller at the respondent's office. The dividend checks were of minimal amounts.

The Committee on Legal Ethics maintains that an attorney-client relationship did, in fact, exist between the respondent and the Millers. Betty Miller paid the respondent \$350 at the time the real estate in Kanawha County was transferred, and Ilene and Ernest Miller paid him \$500 to complete the signing of the deed over to them. Although there was some misunderstanding as to what these payments covered, we accept the Committee's conclusion that the creation of an attorney-client relationship does not depend upon payment, fee, or a formal contract of employment; rather, the relationship may be created as a result of the parties' conduct. See syl. pt. 1, Keenan v. Scott, 64 W. Va. 137, 61 S.E. 806 (1908). See also Western Auto Supply Co. v. Dillard, 153 W. Va. 678, 685, 172 S.E.2d 388, 393 (1970); State ex rel. Magun v. Sharp, 143 W. Va. 594, 596, 103 S.E.2d 792, 794 (1958).

The respondent is charged with violating DR 7-101(A) (1) and (2) of the Code of Professional Responsibility (1983), which state:

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being

punctual in fulfilling all professional commitments, ~~by avoiding offensive~~ tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

The Committee on Legal Ethics, in its complaint, alleges that the respondent failed to seek the lawful objectives of his client by failing to complete the stock transfer after an initial attempt to do so. Importantly, this occurred after the respondent represented to the Committee that he would do so, shortly before the original charges were dropped.

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.

Syl. pt. 2, Committee on Legal Ethics v. Daniel, 160 W. Va. 388, 235 S.E.2d 369 (1977).

The Committee, in the case now before us, has met its burden of establishing the charges against the respondent. The respondent did not file a brief to support otherwise, and notified this Court by letter of his intention to not do so.

Accordingly, it is ADJUDGED, ORDERED and DECREED that a public reprimand is an appropriate sanction in this disciplinary proceeding.

In deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession.

Syl. pt. 3, Committee on Legal Ethics v. Walker, No. 16795 (W. Va. June 4, 1987).

The respondent will bear the expenses incurred by the Committee in the investigation and hearing of this matter, in the amount of \$623.58. See State Bar By-Laws, art. VI, § 20 (1986).