

At a Regular Term of the Supreme Court of Appeals of West Virginia, continued and held at Charleston, Kanawha County, on the 3rd day of April, 1986, the following order was made and entered, to-wit:

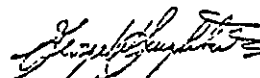
Justice McGraw concurs and reserves the right to file a concurring opinion.

Per Curiam

FILED

The Committee on Legal Ethics
of The West Virginia State Bar

APR 3 1986


CLERK OF THE SUPREME COURT
OF APPEALS OF WEST VIRGINIA

D. 16942 v.

Morton I. Taber, a member of
The West Virginia State Bar

This is a disciplinary hearing instituted by the Committee on Legal Ethics of the West Virginia State Bar against the respondent, Morton I. Taber, a licensed attorney who practices law in Kanawha County. The respondent is charged with the following violations of the Code of Professional Responsibility: neglect of a legal matter entrusted to him by a client in violation of DR 6-101(A)(3); failure to seek the lawful objectives of his client through reasonably available means in violation of DR 7-101(A)(1); failure to carry out a contract of employment for professional services in violation of DR 7-101(A)(2); causing prejudice or damage to his client during the professional relationship in violation of DR 7-101(A)(3). The Committee has recommended that the respondent be publicly reprimanded for professional misconduct.

The evidence adduced at a hearing conducted before the Committee on February 22, 1985, consisted almost entirely of the sharply contradictory testimony of the complainant, Mr. Roger L. Fields, and of the respondent. In his testimony, Mr. Fields asserted that the respondent had undertaken to investigate and prosecute any claim Mr. Fields might have as a result of personal injuries he had sustained when a ketchup bottle exploded in his hand in a Charleston restaurant in April, 1981. Mr. Fields

further asserted that the respondent had failed to interview witnesses or to otherwise investigate the facts surrounding the injury, and had allowed the statute of limitations to expire without initiating any tort litigation on his behalf. The respondent, on the other hand, asserted that he was retained only to make an initial determination as to the viability of Mr. Fields' claim, which the respondent considered somewhat doubtful, and that he was unable to perform that function because Mr. Fields failed to produce necessary witnesses to be interviewed.

In attorney disciplinary proceedings, the burden is on the Committee to prove the charges contained in the complaint by full, clear and preponderating evidence. Committee on Legal Ethics v. Tatterson, ___ W.Va. ___, 319 S.E.2d 381 (1984). See also Committee on Legal Ethics v. Daniel, 160 W.Va. 388, 235 S.E.2d 369 (1977); Committee on Legal Ethics v. Lewis, 156 W.Va. 809, 197 S.E.2d 312 (1973). " 'All proper' intendments are in favor of the attorney, and reasonable doubts or conflicts in the evidence should be resolved in his favor * * * ." Committee on Legal Ethics v. Pietranton, 143 W.Va. 11, 26, 99 S.E.2d 15, 23 (1957). See also Committee on Legal Ethics v. Lewis, supra; Committee on Legal Ethics v. Smith, 156 W.Va. 471, 194 S.E.2d 665 (1973).

After careful consideration of the record in this proceeding, this Court is of the opinion that the Committee has failed to meet its burden of proving the charges contained in the complaint. The respondent's testimony was at least as credible as the evidence upon which the Committee relied in reaching its findings and conclusions. When the conflicts in the testimony are resolved in the respondent's favor, we think the evidence

falls far short of the degree of proof required in a proceeding such as this.

It is therefore ORDERED that, pursuant to Article VI, §20 of the West Virginia State Bar By-Laws, the complaint against respondent Morton I. Taber is hereby dismissed.

It is further ORDERED that a copy of this Order be certified to the Executive Director of the West Virginia State Bar and all parties hereto.

A True Copy

Attest:


Clerk Supreme Court of Appeals

FILED

JUN 16 1983

George H. McGraw
CLERK OF THE
No. 16942 - THE COMMITTEE ON LEGAL ETHICS OF THE WEST VIRGINIA
STATE BAR v. MORTON I. TABER, A MEMBER OF THE WEST
VIRGINIA STATE BAR

McGraw, Justice, concurring:

The complainant in the instant proceeding informed the respondent from the hospital by telephone that a ketchup bottle had exploded in his hand. A few days later, the respondent was informed by the attorney for the restaurant that the bottle had broken as the complainant was striking it against a countertop. At their initial meeting two weeks later, the respondent informed the complainant of the restaurant's version of the accident, and instructed the complainant to produce any witnesses to the accident. No witnesses were produced, and consequently no action was filed. Prosecution of frivolous litigation, a function of the "file it and forget it" syndrome that afflicts many practitioners, produces only delay and dilution. Lawyers perform a valuable service to the judicial system in the exercise of self-restraint with respect to the commencement of lawsuits. Where an attorney is consulted for the limited purpose of ascertaining whether a valid claim exists, it is not unreasonable to request production of corroborating evidence by the client. When no corroborating evidence is produced or further communication is made, it is not unethical for the attorney involved to fail to take further action. Thus, I concur with the dismissal of the disciplinary complaint in this proceeding.