

FILED

MAR 27 1989

Anita Ramsey
CLERK OF THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Per Curiam:

Committee on Legal Ethics of
the West Virginia State Bar

No. 18912 v.

Robert E. Wright, a member of
the West Virginia State Bar

The Committee on Legal Ethics in this proceeding prays that this Court suspend Robert E. Wright's license to practice law for a period of six months for neglect of a client's interest and for misrepresentation relating to that neglect. After considering the record, this Court concludes that the Committee has proven the charges against Mr. Wright and that the sanction recommended by the Committee is appropriate.

In its complaint in this matter the Committee on Legal Ethics alleges that in December, 1982, Mr. and Mrs. Delbert Wade retained Mr. Wright to represent them in certain legal matters relating to an occupational injury sustained by Mr. Wade at a construction site in Marshall County on July 14, 1981. It was understood that Mr. Wright would seek disability benefits for Mr. Wade under the West Virginia workers' compensation law and the United State Social Security Act. It was also understood that Mr. Wright would attempt to recover damages against Mr. Wade's employer, Babcock and Wilcox Company, in a civil action.

The complaint further indicates that Mr. Wright failed to file an action against Babcock and Wilcox Company until more than two years after the date upon which Mr. Wade's cause of action arose. Because of late filing, the action was barred by the West Virginia statute of limitations. The complaint instituting the action also failed to contain allegations necessary to support an action against an employer who is a subscriber

to the West Virginia Workers' Compensation Fund. Because of the late filing, the action was dismissed on April 18, 1984.

After the dismissal, Mr. Wright, according to the Committee, failed to inform the Wades of the dismissal of the action and actually deceived them into believing that the action was still pending.

Mr. Wright was subsequently charged with violation of Disciplinary Rule 1-102(A)(4) of the West Virginia Code of Professional Responsibility by the Committee on Legal Ethics of the West Virginia State Bar. Disciplinary Rule 1-102(A)(4) provides that: "A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

After conducting hearings in the matter, the Committee on Legal Ethics concluded that Mr. Wright had violated the disciplinary rule and it now recommends that this Court suspend the respondent's license to practice law for a period of six months.

In syllabus point 2 of Committee on Legal Ethics of the West Virginia State Bar v. Daniel, 160 W.Va. 388, 235 S.E.2d 369 (1977), this Court discussed the burden which the Committee must meet before an attorney will be sanctioned for ethical violations. The Court stated in syllabus point 2:

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.

See also Committee on Legal Ethics v. Tatterson, ___ W.Va. ___, 319 S.E.2d 381 (1984).

The evidence in this case rather conclusively shows that Mr. Wade was injured on July 14, 1981. It also shows that

the Wades retained Mr. Wright to represent them sometime during 1982. In spite of this, a complaint was not filed until November 10, 1983, more than two years after the incident giving rise to the cause of action and at a point where the action was barred by the statute of limitations. Delbert F. Wade testified that he had numerous meetings with Mr. Wright after he had retained him, and that he had discussed the case with Mr. Wright. Mr. Wade indicated that Mr. Wright had never, of his volition, raised the problem of the statute of limitations. He also testified that at one point he asked Mr. Wright whether papers had to be in within two years, and Mr. Wright had told him "Yes", and "It's been taken care of."

Mr. Wade indicated that his wife had twice contacted Mr. Wright in 1987, after the action had been dismissed, and that Mr. Wright had assured his wife that the case was proceeding. Mr. Wade taped the telephone conversations, and transcripts of those tapes were submitted to the Committee on Legal Ethics. The first conversation, which occurred on March 5, 1987, proceeded as follows:

Mrs. Wade: First of all, you haven't heard anything from Wheeling about our lawsuit have you?

Mr. Wright: No.

Mrs. Wade: Do you think you're going to hear anything within the next thirty days?

Mr. Wright: Oh, I can't tell. I plan on being up there and that is the best way to hear something is to go talk to them. Because, you know, they are busy like everybody else and, but when you confront them face to face, then, you know, you get something out of them that way anyway.

* * *

Mrs. Wade: All right. Now, about this lawsuit?

Mr. Wright: Uh huh.

Mrs. Wade: Is it going to be held in Moundsville or Wheeling or where?

Mr. Wright: Mounds, er in Wheeling.

Mrs. Wade: In Wheeling?

Mr. Wright: Yes.

Mrs. Wade: In the what?

Mr. Wright: In the Federal Court.

Mrs. Wade: In the Federal Court?

Mr. Wright: Yes.

Mrs. Wade: Oh, I never did know exactly where it was going to be done at.

Mr. Wright: Yes. Well, as soon as I hear something I'll let you know.

In the conversation which occurred on March 20, 1987, Mr. Wright made similar representations:

Mrs. Wade: Have you heard anything about our lawsuit?

Mr. Wright: Yes. I was talking - got a letter from them yesterday and uh, they were talking to some other witnesses, uh --

Mrs. Wade: Who was you talking to?

Mr. Wright: Uh, Dana Kahle.

Mrs. Wade: I never heard of that.

Mr. Wright: He's a lawyer up there that works with me.

Mrs. Wade: Oh.

Mr. Wright: And he said that, uh, he would get back to me in, oh I don't know, as soon as he could.

Mrs. Wade: Well, do you think it will go in this year?

Mr. Wright: I hope so.

Mrs. Wade: Have we got a pretty good suit?

Mr. Wright: Well, I think so. I'm having trouble with some of the other lawyers.

Disciplinary Rule 1-102(A)(4) of the West Virginia Code of Professional Responsibility indicates that a lawyer should not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

This Court believes that the evidence developed in the proceedings before the Committee on Legal Ethics clearly and convincingly shows that Mr. Wright attempted to deceive the Wades, his clients, about the statute of limitations problem, about his failure to file a complaint in the Wades' proceeding in a timely manner, and about the fact that their action had been dismissed and was no longer pending.

Given the nature of Mr. Wright's conduct, this Court believes that the sanction recommended by the Committee on Legal Ethics, that the respondent be suspended from the practice of law for a period of six months, is appropriate and consistent with the sanction imposed in The Committee on Legal Ethics of the West Virginia State Bar v. Lilly, ___ W.Va. ___, 328 S.E.2d 696 (1985).

The Committee on Legal Ethics also attaches an expense statement to its complaint, alleging that the expenses incurred by it in this matter amounted to \$802.11. It prays that it be awarded costs in this proceeding. This Court has recognized that such an award is appropriate. Committee on Legal Ethics v. White, ___ W.Va. ___, 349 S.E.2d 919 (1986); Committee on Legal Ethics v. Pence, 161 W.Va. 240, 240 S.E.2d 668 (1977).

It is, therefore, Adjudged and Ordered that the respondent, Robert E. Wright, be, and the same hereby is, suspended from the practice of law in the State of West Virginia for the period of six months from the date of the filing of this order and that at the end of that suspension period he be automatically

reinstated to practice law in the State of West Virginia. It is further Adjudged and Ordered that Mr. Wright reimburse the Committee on Legal Ethics in the sum of \$802.11 for its costs in this proceeding.

Chief Justice Brotherton, deeming himself disqualified, did not participate in the decision of this case.

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