

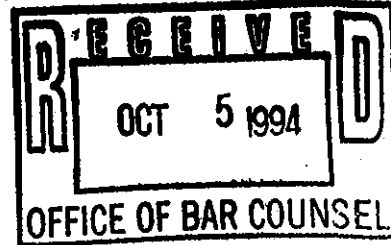
STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 29th day of September, 1994, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 22445

**Sidney H. Bell, a member of The West
Virginia State Bar, Respondent**




On a former day, to-wit, July 28, 1994, came the complainant, the Lawyer Disciplinary Board, by Teresa A. Tarr, its attorney, pursuant to Rule 3.10, Rules of Lawyer Disciplinary Board, and presented to the Court its written recommended disposition in the above-captioned proceeding, recommending a public reprimand of the respondent, Sidney H. Bell, a member of The West Virginia State Bar, and a suspension of his license to practice law in the State of West Virginia for a period of one month with automatic reinstatement.

There being heard neither consent nor objection from the respondent pursuant to Rule 3.11, Rules of Lawyer Disciplinary Board, it is hereby ordered that the written recommended disposition of the Lawyer Disciplinary Board be, and it hereby is, adopted. It is therefore ordered that a public reprimand issue of the respondent and that his license to practice law in the State of West Virginia be, and it hereby is, suspended for a period of one month effective on the 1st day of November, 1994. It is further ordered that respondent's license to practice law in the State of West Virginia be automatically reinstated upon completion of the one-month suspension. Chief Justice Brotherton absent.

Service of a copy of this order upon all parties herein shall constitute notice of the contents herein.

A True Copy

Attest: 
Clerk, Supreme Court of Appeals

**BEFORE THE COMMITTEE ON LEGAL ETHICS
OF THE WEST VIRGINIA STATE BAR**

**IN RE: SIDNEY H. BELL, a member of
 The West Virginia State Bar**

**I.D. Nos. 93-03-392
 92-03-484**

HEARING PANEL SUB-COMMITTEE REPORT

The Hearing Panel Sub-Committee, having reviewed the Proposed Stipulated Findings of Fact, Conclusions of Law, and Recommended Discipline in this matter, does find them to be acceptable and, consistent with the Proposed Stipulated Findings of Fact, Conclusions of Law, and Recommended Discipline, does make the following Findings of Fact, Conclusions of Law, and Recommended Discipline:

FINDINGS OF FACT

1. Sidney H. Bell (hereinafter Respondent) is a licensed member of The West Virginia State Bar, who practices in Mercer and McDowell Counties, West Virginia, and, as such, is subject to the disciplinary jurisdiction of the West Virginia Supreme Court of Appeals and its properly constituted Committee on Legal Ethics of The West Virginia State Bar (hereinafter Committee).

COUNT I -- I.D. No. 92-03-484

2. In 1980, Billy R. Waldron and Susan W. Payne were married in McDowell County, West Virginia. The couple had two children.

3. In February 1991, Mr. Waldron initiated divorce proceedings against Ms. Payne. The final order of divorce was entered by the Circuit Court of McDowell County on August 27, 1991. Ms. Payne was awarded custody of the children.

4. In January 1992, Mr. Waldron retained Respondent to represent him in matters pertaining to the divorce. Ms. Payne was represented by Robert E. Blair, Esquire. In March 1992, Respondent filed a petition to modify custody in the Circuit Court of McDowell County on behalf of Mr. Waldron. A hearing was originally set for March 24, 1992, but was postponed at the request of counsel for Ms. Payne.

5. Meanwhile, Mr. Waldron had summer visitation with his children from July 1, 1992, through July 31, 1992. When Ms. Payne went to pick up her children at the designated time, Mr. Waldron allegedly refused to return them. She then contacted Respondent by telephone. Respondent told Ms. Payne that a contempt action in circuit court was by far the quickest method to accomplish the return of physical custody of the children. On the date of this telephone call, Ms. Payne was still represented by Mr. Blair.

6. On August 1, 1992, Ms. Payne filed a criminal complaint in McDowell County Magistrate Court charging Mr. Waldron with felony child concealment pursuant to W. Va. Code § 61-2-14(d) (1984). Mr. Waldron was arrested and arraigned in Magistrate Court on August 3, 1992. Following his arrest, Mr. Waldron contacted Respondent and asked him if he would represent him in the criminal matter. Respondent advised Mr. Waldron that he could not do so because he was going to be appointed an Assistant Prosecuting Attorney for McDowell County on August 11, 1992.

7. On August 7, 1993, Respondent's secretary sent out Notice of Hearing in the civil custody case which stated:

Please take notice that the undersigned attorney will bring this matter on for a status conference before the Honorable Gloria M. Stephens, Family Law Master of the Circuit Court of McDowell County, West Virginia . . . on the 30th day of September 1992.

The undersigned attorney was Respondent. On August 11, 1992, Respondent officially became an Assistant Prosecuting Attorney for McDowell County. During this time period, Mr. Blair withdrew as Ms. Payne's counsel.

8. On or about September 14, 1992, Ms. Payne retained Mary Ellen Griffith, Esquire, to represent her in the custody matter. On or about September 15, 1992, Ms. Griffith, on behalf of Ms. Payne, went before the Family Law Master in an effort to regain custody of the children. The Family Law Master issued an Order granting the following ex parte relief:

- (1) That the Defendant shall take custody of the minor children of the parties immediately and that the Plaintiff shall refrain from interfering with this custody in any way.
- (2) That the Sheriff of McDowell County shall serve a copy of this Order on the Plaintiff and assist the defendant in regaining custody of the children.
- (3) That a hearing on this matter is scheduled for the 30th day of September, 1992 at 10:15 a.m. before Gloria Stephens, Family Law Master.

However, a line was placed through Number 2, crossing it out of the Order.

10. Following the issuance of this Order, the Sheriff of McDowell County contacted Respondent and asked him if the Department was to assist Ms. Payne in regaining custody of her children. Respondent, in his capacity as Assistant Prosecutor,

advised the sheriff that the Family Law Master had struck that paragraph from the Order.

11. Immediately after he spoke with the Sheriff, Respondent met Ms. Payne in the parking lot of the McDowell County Courthouse. At that time, the Respondent also directly spoke to and told Ms. Payne that the Sheriff would not be assisting her in the return of her children. Respondent again advised Ms. Payne that a contempt action in circuit court was by far the quickest method to accomplish the return of physical custody of the children. During this conversation, Respondent still represented Mr. Waldron in the custody matter while Ms. Payne was represented by Ms. Griffith. Moreover, Respondent knew Ms. Payne was represented by counsel because he had already seen the ex parte Order, which stated as such and was signed as having been prepared by Ms. Griffith.

12. On September 21, 1992, a preliminary hearing was held in Magistrate Court on the felony child concealment charge. Respondent did not represent the State; instead, the matter was handled by another Assistant Prosecuting Attorney. At the hearing, the Magistrate did not find probable cause, and the case was dismissed.

13. On September 30, 1992, a hearing was held before the Family Law Master in connection with the custody matter. Mr. Waldron was represented by Respondent. At the hearing, the Law Master ordered psychiatric and psychological evaluations of the parties, the children and Ms. Payne's current husband.

14. On October 15, 1992, Ms. Payne regained custody of both children. Custody of one child was obtained by going to the Iaeger Elementary School and taking the youngster. When the school principal called Respondent for advice about the situation, Respondent very clearly told him that he could not give such advice, other than to confirm that Ms. Payne had legal custody of the children. Respondent told the principal that he had a conflict of interest.

15. Respondent continued as counsel of record to Mr. Waldron in the divorce action at least through December 1992. During this period he also served as an Assistant Prosecuting Attorney. In January 1993, Respondent became Prosecuting Attorney of McDowell County.

COUNT II -- I.D. No. 93-03-392

16. In Summer 1986, Phillip Bellini was a patient at Bluefield Community Hospital. Bellini alleged that he suffered a broken facial bone, bruises, abrasions and other injuries after a hospital employee negligently failed to properly secure him in a chair. Subsequently, Mr. Bellini retained Respondent to represent him in an action against the hospital. Bellini and Respondent entered into an oral contingency fee agreement.

17. In Spring 1988, Respondent obtained Mr. Bellini's medical records. In July 1988, Respondent filed a complaint against Bluefield Community Hospital in the Circuit Court of Mercer County. The case was styled Bellini v. Bluefield Community Hospital, Inc., Civil Action No. 88-C-754-B.

18. From the time the suit was filed until the present, Respondent took no action on Mr. Bellini's case. He did not interview any witnesses, draft any interrogatories or conduct any depositions. Respondent never even bothered to check on the status of the case with the Court. Respondent maintained that he did not proceed with the case because Mr. Bellini had no money to hire an expert. Yet, Mr. Bellini stated that Respondent and he never had any discussions about retaining an expert for the case. Mr. Bellini also stated that when he contacted Respondent's office sometime in 1992, he was told that Respondent was working on a trial date.

19. On or about December 20, 1990, Wilma F. Grubb, the Circuit Clerk of Mercer County, sent a purge list to Respondent. The list was sent by first-class mail to Respondent, and Bellini v. Bluefield Community Hospital appeared on page 19. The list was accompanied by a letter which stated the following:

The following list of civil cases have been pending in the Circuit Court of Mercer County for more than two years and there has been no order or proceeding to continue same. Pursuant to Rule 41 of the West Virginia Rules of Civil Procedure, the action will be dismissed by order of the Court unless this Office receives on or before January 7, 1991, a written request to continue the action.

Respondent, who states that he never received the list from the Clerk's Office, did not file a request to continue the action.

20. On January 17, 1991, the Circuit Court, sua sponte, dismissed Civil Action No. 88-C-754-B. The dismissal Order stated that "[the] case having been pending in the Circuit Court for more than two years, and there having been no order but to continue it,

and the plaintiff failing to prosecute the same, it is ordered to be dismissed and omitted from the docket."

21. Respondent never moved the Court to have the case reinstated within the three-term rule of Rule 41 of the West Virginia Rules of Civil Procedure, which provides in pertinent part:

Any court in which is pending an action wherein for more than one year there has been no order or proceeding . . . may, in its discretion, order such action to be struck from its docket; and it shall thereby be discontinued. The court may direct that such order be published in such newspaper as the court may name. The court may, on motion, reinstate on its trial docket any action dismissed under this rule . . . within three terms after entry of the order of dismissal. . . .

22. Mr. Bellini did not learn of the dismissal until September 20, 1993, when he personally checked on the status of his case with the Circuit Clerk's Office.

CONCLUSIONS OF LAW

23. By continuing to represent Mr. Waldron in the child custody action after he was hired by the McDowell County Prosecutor's Office as an Assistant Prosecutor and a criminal complaint had been filed against Mr. Waldron for felony child concealment and by advising Ms. Payne in his role as an Assistant Prosecuting Attorney, Respondent violated Rule 1.7(b) of the Rules of Professional Conduct which provides:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation.

An aggravating factor to this charge is that Respondent has twice before been admonished by the Committee for continuing to represent a client where there has been a conflict of interest in I.D. Nos. 1793 and 89-130. Furthermore, the conflicts which arose in these cases resulted in part from his position as an Assistant Prosecuting Attorney.

24. By having ex parte contact with Ms. Payne when she was represented by counsel, Respondent violated Rule 4.2 of the Rules of Professional Conduct which states:

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

25. By failing to prosecute Mr. Bellini's claim in Bellini v. Bluefield Community Hospital, Civil Action No. 88-C-754-B, Respondent violated Rule 1.3 of the Rules of Professional Conduct which states: "A lawyer shall act with reasonable diligence and promptness in representing a client."


26. By failing to advise Mr. Bellini that Bellini v. Bluefield Community Hospital, Civil Action No. 88-c-754-B had been dismissed, Respondent violated Rule 1.4(a) of the Rules of Professional Conduct which provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

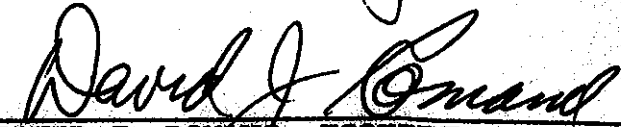
RECOMMENDED DISCIPLINE

27. It is agreed and recommended by the parties hereto that Respondent shall receive a public reprimand and shall be suspended from the practice of law for one (1) month, at the conclusion of which he shall be automatically reinstated.

Recommended Discipline are presented this 22ND day of

JULY 1994.


C. BLAINE MYERS, ESQUIRE, CHAIRMAN


DAVID J. ROMANO, ESQUIRE


KATHARINE B. BECKER

