

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 November, 1994, the following order was made and entered:

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

vs.) No. 22265

Percy L. Clay, a member of The West
Virginia State Bar, Respondent

The Court today handed down a prepared order suspending the license of the respondent, Percy L. Clay, a member of The West Virginia State Bar, for a period of three months from the date of service of this order, and requiring the respondent to reimburse the Lawyer Disciplinary Board for the costs and expenses incurred in the investigation of this matter. Retired Justice Miller sitting by temporary assignment. Chief Justice Brotherton did not participate.

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

A True Copy

Attest:



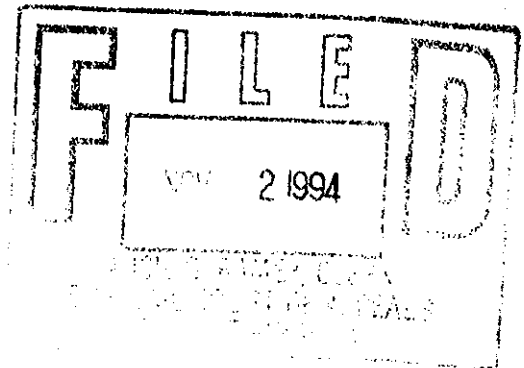
Clerk, Supreme Court of Appeals

Per Curiam:

The Committee on Legal Ethics
of the West Virginia State Bar

No. 22265 v.

Percy L. Clay, a member of
the West Virginia State Bar



In the complaint in this legal ethics proceeding, the Committee on Legal Ethics of the West Virginia State Bar claims that the respondent, Percy L. Clay, a member of the Bar, has violated provisions of the Code of Professional Conduct by failing to pursue two professional matters entrusted to him, by failing to communicate with clients, by failing to inform a client of the closure of his law office, and by failing to return client files. The Committee also contends that the respondent has failed to communicate appropriately with Bar counsel.

After reviewing the documents filed, this Court concludes that they clearly and convincingly show that the respondent has violated the Code of Professional Conduct as charged by the Committee on Legal Ethics and that, under the circumstances, it is appropriate that the respondent's license to practice law be suspended for three months and that he be required to pay the costs of this proceeding.

The documents filed in this case indicate that in 1986 Ms. Penelope Fisher retained the respondent, who was then practicing law in Marion County, to represent her in a case involving a personal injury to her daughter. They also show that, although he did some work on the case, the respondent later, with Ms. Fisher's permission, turned the case over to another attorney. It does not appear that he appropriately followed up on the matter or appropriately apprised Ms. Fisher of various changes in his address.

Ms. Fisher subsequently complained to the West Virginia State Bar about the respondent's lack of attention to the matter which she had entrusted to him.

On June 12, 1987, counsel for the West Virginia State Bar wrote the respondent about Ms. Fisher's complaint. The respondent did not reply, and Bar counsel subsequently repeatedly attempted to contact the respondent. The record rather conclusively shows that, in spite of the attempts by Bar counsel to elicit a response, the respondent did not formally and appropriately, in writing, respond to Ms. Fisher's complaint.

In addition to claiming that the respondent violated the Code of Professional Conduct in his handling of Ms. Fisher's case, the Committee on Legal Ethics claims that the respondent violated

the Code of Professional Conduct in handling a matter for Mr. Roy Riffle.

It appears that on April 16, 1986, Mr. Riffle retained the respondent to initiate a divorce proceeding. Although the respondent prepared a divorce complaint, it does not appear that the respondent ever filed the complaint.

Mr. Riffle subsequently filed a complaint with the West Virginia State Bar, and, although Bar counsel repeatedly requested that the respondent submit a response, the respondent did not submit an appropriate answer.

Disciplinary Rule 6-101 of the Code of Professional Responsibility, the code governing the respondent's conduct at the time of the incidents charged, requires that: "(A) A lawyer shall not: . . . (3) Neglect a legal matter entrusted to him."

Another disciplinary rule, Disciplinary Rule 2-110 of the Code of Professional Responsibility, provides:

[A] lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

When the Committee on Legal Ethics charges that an attorney has violated a provision of the Code of Professional Conduct, it has the burden of proving such violation by clear and convincing evidence. As stated in syllabus point 1 of Committee on Legal Ethics v. Lewis, 156 W.Va. 809, 197 S.E.2d 312 (1973):

In a court proceeding prosecuted by the Committee on Legal Ethics of the West Virginia State Bar . . . the burden is on the Committee to prove by full, preponderating and clear evidence the charges contained in the complaint filed on behalf of the Committee.

See also Committee on Legal Ethics v. Six, 181 W.Va. 52, 380 S.E.2d 219 (1989); Committee on Legal Ethics v. Thompson, 177 W.Va. 752, 356 S.E.2d 623 (1987); Committee on Legal Ethics v. Daniel, 160 W.Va. 388, 235 S.E.2d 369 (1977); and Committee on Legal Ethics v. Pietranton, 143 W.Va. 11, 99 S.E.2d 15 (1957).

After reviewing the documents filed in the present case, this Court believes that they do clearly and convincingly show that the respondent, Percy L. Clay, did neglect the matters entrusted to him by Ms. Penelope Fisher and Mr. Roy Riffle. The Court also believes that the respondent failed to respond to the communications of State Bar counsel and failed to provide information relating to his representation of Ms. Fisher and Mr. Riffle. This conduct violated Rule 8.1(b) of the Rules of Professional Conduct, which provides:

[A] lawyer . . . in connection with a disciplinary matter, shall not: . . . (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to

respond to a lawful demand for information from an admissions or disciplinary authority.

Rule 3.15 of the Rules of Lawyer Disciplinary procedure provides, in part, that in a disciplinary proceeding:

[T]he Supreme Court of Appeals may impose any one or more of the following sanctions for a violation of the Rules of Professional Conduct . . . (8) suspension

In the present case, the Court believes that the respondent's infractions require the suspension of his license to practice law for the period of three months. The Court also believes that it is appropriate that he be required to pay the costs of the proceeding against him.

It is, therefore, ADJUDGED and ORDERED that the license of the respondent, Percy L. Clay, to practice law in the State of West Virginia be, and the same hereby is, suspended for the period of three months from the date of service of this order. It is further ORDERED that he reimburse the Committee on Legal Ethics of the West Virginia State Bar for its costs in pursuing this case.

Chief Justice Brotherton did not participate.

Retired Justice Miller sitting by special assignment.