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STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals ~~continued and held at~~ Charleston, Kanawha County, on the 10th day of October, 2003, the following order was made and entered:

Lawyer Disciplinary Board, Respondent

vs.) No. 28239

John Hey, a former member of The West Virginia State Bar, Petitioner

On a former day, to-wit, September 15, 2000, came the petitioner, John Hey, a former member of The West Virginia State Bar, by Marvin W. Masters and David L. White, Masters & Taylor, his attorneys, pursuant to Rule 3.24 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court his petition for reinstatement of his license to practice law in the State of West Virginia.

Thereafter, on the 18th day of September, 2003, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by William B. Richardson, Jr., its chairperson, and presented to the Court its written recommended decision recommending that the petitioner's license to practice law in the State of West Virginia be reinstated with the following conditions: (1) petitioner be required to continue attending Alcoholics Anonymous meetings for as long as petitioner continues to practice law; (2) petitioner refrain from the consumption of alcohol; (3) petitioner complete a training seminar approved by the Office of Disciplinary Counsel that pertains to the definition and prevention of sexual harassment in the workplace; (4) petitioner fulfill any outstanding MCLE reporting requirements, or show just cause why he should not be subject to the

MCLE reporting requirements, before reinstatement will be considered; (5) petitioner pay such amount of West Virginia State Bar dues in order to bring him in compliance with State Bar requirements; (6) petitioner's law license be supervised for a period of two years following reinstatement, pursuant to agreement with the Office of Disciplinary Counsel; (6) petitioner agree never to run for public office in the future; and (7) petitioner must understand that the Supreme Court in its discretion may order petitioner to pay all costs incurred in the investigation and proceedings in this matter.

Finally, on the 24th day of September, 2003, came the respondent, the Office of Lawyer Disciplinary Counsel, by Lawrence J. Lewis, Chief Lawyer Disciplinary Counsel, and presented to the Court its written response stating that it has no objections to the recommendations filed by the Hearing Panel Subcommittee.

Upon consideration whereof, the Court is of opinion to and doth hereby grant the petition for reinstatement to the practice of law, subject to certain conditions. It is therefore ordered that the license to practice law in the State of West Virginia of the petitioner, John Hey, be, and it hereby is, reinstated with the following conditions: (1) petitioner shall continue attending Alcoholics Anonymous meetings for as long as petitioner continues to practice law; (2) petitioner shall refrain from the consumption of alcohol; (3) petitioner shall complete a training seminar approved by the Office of Disciplinary Counsel that pertains to the definition and prevention of sexual harassment in the workplace; (4) petitioner shall fulfill any outstanding MCLE reporting requirements, or show just cause why he should not be subject to the MCLE reporting requirements; (5) petitioner shall pay such amount of West Virginia State Bar dues in

order to bring him in compliance with State Bar requirements; (6) petitioner's law license shall be supervised for a period of two years following reinstatement, pursuant to agreement with the Office of Disciplinary Counsel; (6) petitioner shall satisfy the previously assessed fine and costs in the amount of \$29,572.48 by continuing to make timely payments thereon. The current amount of this debt is \$7,322.48; and (7) This Court recognizes that petitioner has agreed that he will never run for public office in the future, but does not believe it has jurisdiction to impose such a requirement.

Justices Davis and McGraw would refuse the petition for reinstatement. Justice Davis further states the following in support of her decision:

The transgressions that led to Petitioner Hey's disbarment resulted from his alcoholism and from numerous instances of sexual misconduct towards court employees. In its report, the Hearing Panel Subcommittee appears to dismiss Hey's sexual misconduct as a manifestation of his alcoholism. Such view, however, directly contravenes the standard for considering whether a disbarred attorney should be reinstated:

The general rule for reinstatement is that a disbarred attorney in order to regain admission to the practice of law bear the burden of showing he presently possesses the integrity, moral character and legal competence to resume the practice of law. To overcome the adverse effect of the previous disbarment he must demonstrate a record of rehabilitation. In addition, the court must conclude that such reinstatement will not have a justifiable and substantial adverse effect on the public confidence in the administration of justice and in this regard *the seriousness of the conduct leading to disbarment is an important consideration.*

Syl. pt. 1, *In re Brown*, 166 W. Va. 226, 273 S.E.2d 567 (1980) (emphasis added). When this Court initially ruled on Hey's disbarment, we found that, "[i]n this Court's opinion, the conduct admitted by Judge Hey was egregious and deplorable." *In re Hey*, 193 W. Va. 572, 578, 457 S.E.2d 509, 515 (1995) (per curiam). The passage of time, his rehabilitation, and performance of community service have not changed the nature of the misconduct that led to the underlying disciplinary proceedings. Not only did Hey's improprieties lead to his disbarment; they also subjected him to a criminal conviction and civil liability. As such, it would seem that his misconduct was sufficiently serious so as to preclude his reinstatement to the practice of law in this State.

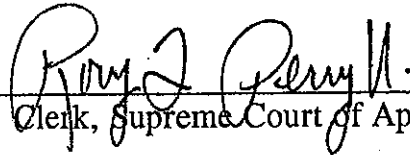
Additionally, Petitioner Hey has failed, repeatedly, to comply with the conditions placed upon him, either completely or until some additional action was taken. There has been no indication that Petitioner Hey has completed any counseling for his inappropriate sexual conduct notwithstanding that such counseling was a condition of both the agreement for surrendering his law license, and of his probation. Moreover, although Hey agreed to surrender his license to this Court, he never did so. He also tried to return his license to active status without following the proper procedure for reinstatement. Furthermore, Hey made no payment toward the \$29,572.40 imposed as fines and costs until arrangements were made for attorney John Hedges to collect. While the fines and costs were imposed in May 1995, no payments were made by Hey until August, 1996. Finally, Hey did not

pay the \$1,000 in fines and costs imposed in connection with his criminal conviction within the required time period. Above all, the record does not demonstrate that Petitioner Hey has accepted responsibility for his actions. By his own admission, he pled guilty to the criminal charges only to preserve his pension.

For the reasons so stated, I respectfully dissent from the majority's decision to reinstate Petitioner Hey's license to practice law in this State.

A True Copy

Attest:


Clerk, Supreme Court of Appeals