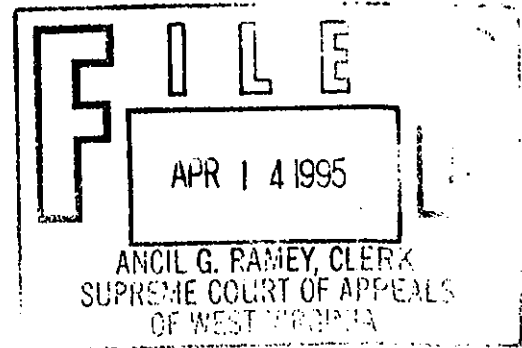


Per Curiam:

Lawyer Disciplinary Board

No. 22629 v.

Edward R. Kohout, a member of
The West Virginia State Bar



In this legal ethics proceeding, the Lawyer Disciplinary Board has recommended, among other things, that this Court suspend the law license of the respondent, Edward R. Kohout, for three years for making fraudulent representations in conjunction with his application for admission to the bar and for engaging in improper practice before the Bankruptcy Court for the Northern District of West Virginia resulting in a three-year suspension of his right to practice before that court. After reviewing the issues presented and the documents filed, we believe that it is appropriate to suspend the respondent's law license for two years, rather than the three years recommended by the Disciplinary Board. We also believe that it is appropriate to impose the other sanctions recommended by the Disciplinary Board.

The first charge giving rise to this matter alleges that the respondent made false representations in applying for admission to the Bar of this State in violation of DR 1-101(A) and DR 1-102

of the Code of Professional Responsibility.¹ Disciplinary Rule 1-101(A) provides:

A lawyer is subject to discipline if he has made a materially false statement in, or if he deliberately failed to disclose a material fact required in connection with, his application for admission to the bar.

Disciplinary Rule 1-102, as relevant to the present proceeding, provides:

Misconduct. -- (A) A Lawyer shall not:

. . . .

- (3) Engage in illegal conduct involving moral turpitude.
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (5) Engage in any other conduct that adversely reflects on his fitness to practice law.

The second charge alleges that in 1992 the respondent was subjected to a three-year suspension of practice in the Bankruptcy Court for the Northern District of West Virginia and that he should thus be subjected to reciprocal discipline under Article VI, Section 28-A, of the West Virginia State Bar By-Laws.

¹The respondent was admitted to the West Virginia State Bar in November, 1987. The ethical propriety of his actions in conjunction with his application to the Bar is thus governed by the Code of Professional Responsibility which was then in effect. The Code of Professional Responsibility was superseded by the Rules of Professional Conduct which were promulgated by this Court on June 30, 1988, effective on and after January 1, 1989.

A hearing was conducted on the charges on February 11, 1994. During the hearing, evidence was introduced showing that on March 20, 1987, the respondent completed a "Character Questionnaire for Admission to the Bar of the State of West Virginia" in conjunction with his application for admission to the West Virginia State Bar. Question 5 on the questionnaire asked: "Were you ever suspended or expelled from a college, university or law school?" The respondent answered, "No."

The evidence showed that beginning in the fall of 1976, the respondent attended the Cumberland School of Law of Samford University in Birmingham, Alabama. While attending that law school, the manager at the student used book exchange, on January 24, 1978, reported to the Dean of the Law School that two books which the respondent had listed with the used book exchange appeared to be new. An investigation revealed, and the respondent subsequently admitted, that the books had been stolen from the Samford University Bookstore. As a result of the investigation and subsequent developments, the respondent was suspended from the law school.

The respondent applied for readmission to the Cumberland Law School, but readmission was denied when it was learned that the respondent had stolen other books in addition to those involved in the initial proceeding, and that he had not been forthright and

truthful throughout the investigation and subsequent student disciplinary proceedings.

The evidence developed during the hearing further showed that the respondent applied for admission to the night school at the Duquesne School of Law in 1982. In his application to that school, he did not reveal that he had previously attended the Cumberland School of Law. Later, in December, 1983, he transferred to the University of Pittsburgh School of Law. In registering at the University of Pittsburgh School of Law, he made no mention of his previous attendance at the Cumberland School of Law, and he answered "no" to a question as to whether he had ever been subject to disciplinary action in any college, graduate or professional school that he had attended. He also affirmatively denied that his schooling had ever been interrupted for one or more terms.

As to the second charge, at the hearing evidence was introduced regarding the respondent's handling of a legal matter in the Bankruptcy Court for the Northern District of West Virginia (hereinafter referred to as the Bankruptcy Court). In the course of representing a bankrupt client, Fred Zara, Jr., the respondent, in addition to taking certain other questionable actions to advance the interests of Mr. Zara's family and associates, filed a "corrected deed of trust," which enhanced the legal claims of Mr. Zara's brothers to a parcel of property owned by Mr. Zara. This deed of trust was filed in violation of an automatic stay of legal

proceedings which went into effect when Mr. Zara's bankruptcy petition was filed. Moreover, the "corrected" deed of trust was not prepared in the way in which corrected documents are usually prepared. Instead, the respondent physically added new language to the original deed of trust. He then photographically copied the altered deed of trust and filed the copy.

An investigation of the respondent's actions was undertaken by the Bankruptcy Court, and the Bankruptcy Court ultimately concluded, among other things, that the respondent had engaged in an intentional series of improper acts planned and directed by the respondent to benefit Mr. Zara, his family and associates. The Bankruptcy Court suspended the respondent's privilege to practice in that court for three years for intentional misrepresentation of facts.

The respondent appealed the Bankruptcy Court's suspension to the United States District Court for the Northern District of West Virginia. That court subsequently affirmed the bankruptcy judge's suspension. The District Court found that the respondent had violated the stay in bankruptcy and that he had drafted deceptive documents and had engaged in other deceptive practices..

In addressing the question of whether discipline is appropriate in the present case, this Court notes that before discipline may appropriately be imposed the charges against the

respondent must be proved by clear and convincing evidence. As stated in syllabus point 1 of Committee on Legal Ethics of the West Virginia State Bar 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 of the West Virginia State Bar v. Six, 181 W.Va. 52, 380 S.E.2d 219 (1989); Committee on Legal Ethics of the West Virginia State Bar v. Thompson, 177 W.Va. 752, 356 S.E.2d 623 (1987); Committee on Legal Ethics of the West Virginia State Bar v. Daniel, 160 W.Va. 388, 235 S.E.2d 369 (1977); and Committee on Legal Ethics of the West Virginia State Bar v. Pietranton, 143 W.Va. 11, 99 S.E.2d 15 (1957).

The documents filed in the present case clearly and convincingly show that the respondent, Edward R. Kohout, (1) made a materially false statement in connection with his application for admission to the West Virginia State Bar in violation of DR 1-101(A) of the Code of Professional Responsibility; (2) engaged in conduct involving dishonesty, fraud, deceit, or other misrepresentation, in violation of DR 1-102, by repeatedly concealing the fact that he had attended and been suspended from the Cumberland Law School; and (3) has been suspended for three years from practice before the Bankruptcy Court for the Northern District of West Virginia.

It is widely recognized that making misrepresentations in conjunction with a bar application is a circumstance warranting the imposition of sanctions upon an attorney. See DR 1-101(A), supra. See also, People v. Culpepper, 645 P.2d 5 (Colo. 1982); In re Mitan, 387 N.E.2d 278 (Ill. 1979); Attorney Grievance Commission of Maryland v. Gilbert, 387 Md. 481, 515 A.2d 454 (Md. 1986); and In Re Elliott, 235 S.E.2d 111 (S.C. 1977). Further, a federal court, such as the Bankruptcy Court for the Northern District of West Virginia, is another jurisdiction within the meaning of the provision justifying the imposition of reciprocal discipline of an attorney. Committee on Legal Ethics of the West Virginia State Bar v. Battistelli, 185 W.Va. 109, 405 S.E.2d 242 (1991).

The Court notes it has rather consistently recognized that in attorney disciplinary proceedings, rather than endeavoring to establish uniform standards of disciplinary action, it would consider the facts and circumstances of each case in determining what disciplinary action, if any, is appropriate. Committee on Legal Ethics of the West Virginia State Bar v. Hobbs, 190 W.Va. 606, 439 S.E.2d 629 (1993); and Committee on Legal Ethics of the West Virginia State Bar v. Boettner, 188 W.Va. 1, 422 S.E.2d 478 (1992).

In the present case, while the evidence adduced shows that on a number of occasions the respondent has made false representations relating to his obtaining of a legal education and

admission to the West Virginia State Bar, those misrepresentations appear to be interconnected and all appear to arise out of the fact that he was initially suspended from the Cumberland School of Law because of his theft of books from that facility. He has also engaged in deception before the Bankruptcy Court for the Northern District of West Virginia.

In a number of cases, this Court has imposed suspensions of less than three years in cases of serious ethical misconduct, some of which arguably have exceeded in severity the misconduct of the respondent in the present case. For instance, in Committee on Legal Ethics of the West Virginia State Bar v. Taylor, 190 W.Va. 133, 437 S.E.2d 443 (1993), the Court suspended an attorney for six months for practicing law when he was knowingly under a current suspension from practicing law; in Committee on Legal Ethics of the West Virginia State Bar v. Hobbs, *supra*, an attorney was suspended for two years for accepting a judge's payoff demand in a personal injury case; and in Committee on Legal Ethics of the West Virginia State Bar v. Hess, 186 W.Va. 514, 413 S.E.2d 169 (1991) an attorney was suspended for two years for converting firm monies to personal use.

In the present case, the Court believes that the respondent has engaged in serious ethical misconduct and has demonstrated a pattern of conduct involving intentional deception. Under the circumstances, the Court believes that appropriate

discipline must entail the suspension of the respondent from the practice of law in the State of West Virginia for two years.

The Court notes that, in addition to recommending that the respondent be suspended from the practice of law, the Committee on Legal Ethics has recommended that other sanctions be imposed against the respondent. These recommendations include the recommendation that the respondent undergo counselling by an appropriate professional, selected by agreement between the respondent and the Office of Disciplinary Counsel, until the professional renders a favorable report, and the recommendation that the respondent be required to pass the Multistate Professional Responsibility Examination before he be readmitted to the practice of law. The Office of Disciplinary Counsel also requests that the respondent be required to pay the costs of the disciplinary proceeding against him.

This Court believes that the recommendations are structured to assist the respondent to appreciate the seriousness and ethical implications of deceit and that the imposition of such sanctions, in addition to suspension, is appropriate in this case.

For the reasons stated, it is ADJUDGED and ORDERED that the license of the respondent, Edward R. Kohout, to practice law in the State of West Virginia be, and the same hereby is, suspended for the period of two years from the date of service of a copy of

this order upon him. It is further ORDERED that the respondent undergo professional counselling by an appropriate professional selected by agreement between the respondent and the Office of Disciplinary Counsel until such time as such professional can certify that he appropriately comprehends and understands the ethical implications of deceit. It is also ORDERED that the respondent pass the Multistate Professional Responsibility Examination before he be readmitted to the practice of law and that he reimburse the Committee on Legal Ethics of the West Virginia State Bar for its costs in pursuing this matter.