

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 16th day of January, 1997, the following order was made and entered:

Lawyer Disciplinary Board,
Complainant

vs.) No. 22897

Monty L. Preiser, an active member of
The West Virginia State Bar, Respondent

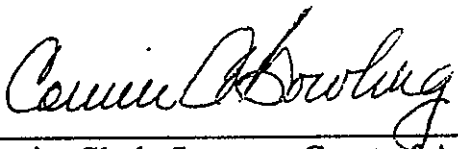
On a former day, to-wit, December 2, 1996, came the respondent, Monty L. Preiser, an active member of The West Virginia State Bar, by Salsbery & Druckman, H. F. Salsbery and Madonna C. Estep, his attorneys, and presented to the Court his motion in writing to dismiss the above-captioned case for the reasons stated therein. Thereafter, on the 13th day of December, 1996, came the respondent, Monty L. Preiser, by Salsbery & Druckman, H. F. Salsbery and Madonna C. Estep, his attorneys, and presented to the Court his supplement thereto. Thereafter, on the 26th day of December, 1996, came the Office of Lawyer Disciplinary Counsel, by Sherri D. Goodman, Chief Lawyer Disciplinary Counsel, and presented to the Court its written response thereto. Thereafter, on the 31st day of December, 1996, came the respondent, Monty L. Preiser, by Salsbery & Druckman, H. F. Salsbery and Madonna C. Estep, his attorneys, and presented to the Court his written reply thereto. Finally, on the 31st day of December, 1996, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Alan D. Moats, its chairman, and presented to the Court its written recommended disposition recommending that the charges in the above-captioned case be dismissed.

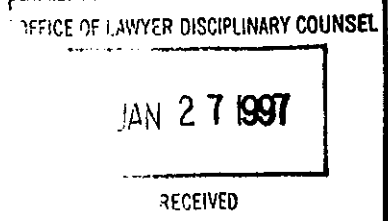
Upon consideration whereof, the Court is of opinion to and doth hereby adopt the recommended disposition of the Hearing Panel Subcommittee of the Lawyer Disciplinary Board. It is therefore ordered that the charges in the above-captioned case be, and they hereby are, dismissed, and this matter is hereby dismissed from the docket of this Court.

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

A True Copy

Attest:


Interim Clerk, Supreme Court of Appeals



BEFORE THE LAWYER DISCIPLINARY BOARD

IN RE: MONTY L. PREISER, a member of the
West Virginia State Bar

I.D. No. 94-03-435

ORDER

The Respondent has filed a motion to dismiss the above styled statement of charges on the basis that the statute of limitations bars the underlying complaint, which motion the Office of Disciplinary Counsel resists.

The Subcommittee has reviewed the motion, as well as all pleadings and documents filed in connection therewith, and after consultation of all three subcommittee members, makes the following findings:

1. The Office of Disciplinary Counsel was informally aware of the conduct giving rise to the statement of charges in February 1992 and formally aware of said conduct on April 27, 1992.

2. The Office of Disciplinary Counsel presented the matter to the Investigative Panel on August 15, 1992, with the Panel declining to open a complaint.

3. On February 24, 1994, a formal ethics complaint was filed by Thomas Wilson setting forth substantially the same information which he had sent to the Office of Disciplinary Counsel on April 27, 1992. The information was presented to the Investigative Panel on April 30, 1994, with the panel voting not to open a complaint.

4. On November 17, 1994, a complaint against the Respondent was docketed in the name of bar counsel based upon information provided by Attorney Michael A. Allen. A Statement of

Charges was thereafter issued.

5. There is a dispute as to when Paul Sutherland became aware of certain of the allegations set forth in the statement of charges.

6. The provisions of Rule 2.14 of the Rules of Lawyer Disciplinary Procedure adopted July 1, 1994, bars disciplinary action based upon complaints filed more than two years after the existence of the violation became known or should have become known.

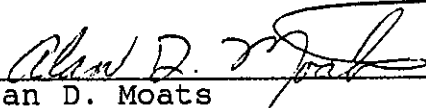
A subcommittee of the Lawyer Disciplinary Board Hearing Panel has previously ruled in the case of IN RE: Kupec, I.D. No. 91-03-179, Supreme Court No.: 23011, that the statute of limitations set forth under Rule 2.14 was applicable to any statement of charges filed after the adoption of said rule.

This subcommittee is of the opinion that the two year limitation period under Rule 2.4 begins running when a complainant knows, or in the exercise of reasonable diligence should know of the existence of a violation of the Rules of Professional Conduct; or at such time as the Office of Disciplinary Counsel has formal knowledge of the existence of a violation, whichever time period is earlier.

The subcommittee does not believe it is necessary to address the disputed issue of material fact as to when Paul Sutherland knew of the existence of a violation of the rules, inasmuch as the Office of Disciplinary Counsel had formal notice of the alleged violation as early as April 27, 1992, more than two years prior to the November 17, 1994 complaint.

Based upon all of the above, the subcommittee is of the opinion that the Statement of Charges, I.D. No. 94-03-435, Supreme Court No.: 22897, should be, and it is hereby ordered dismissed.

ENTER:



Alan D. Moats
Subcommittee Chairman