

No. 25161 - Lawyer Disciplinary Board v. James W. Keenan, an active member of The West Virginia State Bar

FILED

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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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Davis, J., dissenting:

In this case, it was determined conclusively through stipulation that Mr. Keenan violated the Rules of Professional Conduct in matters involving eight clients. The Lawyer Disciplinary Board (the “Board”) found that the violations warranted, among other things, a three-month suspension from the practice of law. However, the majority opinion has declined to follow the Board’s recommendation of suspension. I believe that the majority’s decision not to impose a three-month suspension, as recommended, was arbitrary and unsupported by any mitigating evidence. Consequently, I dissent from the decision in this case.

My main concern involves Mr. Keenan’s repeated display of arrogance in ignoring requests for information by the Office of Disciplinary Counsel (the “ODC”). This Court has cautioned members of the Bar to timely respond to communications by the ODC. In Syllabus point 1 of *Committee on Legal Ethics v. Martin*, 187 W. Va. 340, 419 S.E.2d 4 (1992), we held that:

An attorney violates West Virginia Rule of Professional Conduct 8.1(b) by failing to respond to requests of the West Virginia State Bar concerning allegations in a disciplinary complaint. Such a violation is not contingent upon the issuance of a subpoena for the attorney, but can result from the mere failure to respond to a request for information by the Bar

in connection with an investigation of an ethics complaint.^[1]

(Footnote added). In other words, when the ODC requests an attorney to provide information about a disciplinary complaint's allegations, it is expected that the attorney will cooperate. Mr. Keenan's blatant refusals to comply with the ODC's information requests do not constitute the contemplated cooperation.

Furthermore, the majority opinion does not adhere to the procedures established for determining the discipline warranted in a particular case. The guiding principle in this Court's *de novo* review of sanctions to be imposed upon an attorney was crystallized in Syllabus point 3 of *Committee on Legal Ethics v. Walker*, 178 W. Va. 150, 358 S.E.2d 234 (1987):

In deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession.

Under *Walker*, it is the duty of this Court to fashion sanctions that “serve as an effective deterrent to other members” of the legal community. In the present case, Mr. Keenan intentionally ignored at least eight requests by the ODC to respond to complaints lodged against him.

¹See also Syl. pt. 11, *Committee on Legal Ethics of The West Virginia State Bar v. Cometti*, 189 W. Va. 262, 430 S.E.2d 320 (1993) (“Under Rule 8.1(b) of the Rules of Professional Conduct, as explained in *Committee on Legal Ethics v. Martin*, 187 W. Va. 340, 419 S.E.2d 4 (1992), a disciplinary violation can be imposed if a lawyer fails to cooperate with the Committee on Legal Ethics of the West Virginia State Bar. To the extent that *Committee on Legal Ethics v. Mullins*, 159 W. Va. 647, 226 S.E.2d 427 (1976), differs with *Martin*, it is overruled.”).

In my judgment, Mr. Keenan's deliberate conduct in repeatedly ignoring communications from the ODC, coupled with his consistent failure to respond to his clients' communications, demand that this Court suspend his license to practice law for a minimum of three months. *See Lawyer Disciplinary Bd. v. Swisher*, 203 W. Va. 603, 509 S.E.2d 884 (1998) (per curiam) (conditionally suspending license for, among other things, failure to respond to ODC communication); *Committee on Legal Ethics of the West Virginia State Bar v. Karl*, 192 W. Va. 23, 449 S.E.2d 277 (1994) (holding that, among other things, failure to respond to inquiries from disciplinary panels violated ethical standards and warranted three-month suspension, even though the attorney was no longer engaged in active practice of law as result of assuming judicial office); *Committee on Legal Ethics v. Keenan*, 192 W. Va. 90, 450 S.E.2d 787 (1994) (annulling license of previously suspended attorney for failing to cooperate with and respond to ethics panel investigation); *Committee on Legal Ethics v. Cometti*, 189 W. Va. 262, 430 S.E.2d 320 (1993) (concluding that failure to respond to ethical inquiries by the Committee on Legal Ethics warranted one-month suspension).

I am mindful that mitigating circumstances should be considered when this Court has to determine whether to suspend an attorney's license. Accordingly, I have searched the lines of the majority opinion and combed the record in this case. In doing so, I have not uncovered any mitigating factors that would require this Court to disregard the Board's recommendation of a three-month suspension. The majority opinion points out, in a conclusory fashion, that "[b]ecause of the obvious economic consequences that the respondent would suffer with an inability to practice law, we would not suspend his license to practice." Negative economic consequences brought about as a result of the suspension of an attorney's

license, in and of itself, are not a mitigating factor for sanctioning purposes. In fact, negative economic consequences frequently accompany the suspension of a license to practice law. To accept the reasoning of the majority decision in this case, though, would mean that this Court could never suspend an attorney's license because to do so would result in negative economic consequences for the attorney. I cannot subscribe to such reasoning.

For the reasons stated, I respectfully dissent from the majority opinion in this case.