

No. 22172 -- The Committee on Legal Ethics of the West Virginia State Bar v. Mark A. Karl, Member of the West Virginia State Bar

Neely, J., dissenting:

Under W. Va. Const., Art. VIII, §7, it is not necessary for a judge to be a licensed lawyer during his tenure as a judge.<sup>1</sup>

It is sufficient that a person who becomes a judge have been "admitted to the practice of law for at least five years prior to his election." Removal of a judge from office may be accomplished only by the legislature through impeachment and suspension of a judge during his term can be effected only by this Court through the mechanism for judicial discipline mandated by W. Va. Const., Art. VIII, §8.<sup>2</sup>

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<sup>1</sup>Indeed, Section 7 of Article VIII of our Constitution is carefully worded so that a person need only have been "admitted to practice law for at least five years prior to his election," thereby allowing law professors and others not actively engaged in a law practice to be eligible to sit as judges.

<sup>2</sup>W. Va. Const., Art. VIII, §8 provides in pertinent part: "A justice or judge may be removed only by impeachment in accordance with the provisions of section nine, article four of this Constitution... no justice, judge or magistrate shall be censured, temporarily suspended or retired... unless he shall have been afforded the right to have a hearing before the supreme court of appeals..."

Although decisions of other courts, construing their own constitutions are, for obvious reasons, not binding on us, other state courts have reached the same conclusion that I do. The Supreme Court of Louisiana in In re Jones, 202 La. 729, 12 So.2d 795, 797 (1943) stated:

"The methods that are prescribed in the constitution for ridding the people of unworthy officials, whether by impeachment, address out of office by members of the legislature, or by removal from office by the courts, are exclusive, as are also the penalties that are levied in each instance... It therefore follows that to permit the disbarment of a district judge during his tenure of office, when one of the constitutional requirements for his holding such office is that he must be an attorney at law, would be to sanction the doing indirectly of that which cannot be done directly, that is, his removal from office by reason of disqualification."