

No. 28473 - Lawyer Disciplinary Board v. John G. Sims, an active member of
The West Virginia State Bar

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December 5, 2002

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

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Davis, C.J., concurring, in part, and dissenting, in part:

In this lawyer disciplinary matter, the Hearing Panel Subcommittee (hereinafter referred to as “the Panel”) concluded that the respondent, John G. Sims (hereinafter referred to as “Mr. Sims”), violated Rules 3.6, 3.8 and 8.4 of the West Virginia Rules of Professional Conduct. The majority opinion agreed with this finding and held that “[t]here is no question or dispute that the allegations in this case were proved by clear and convincing evidence.” The Panel recommended that this Court suspend the law license of Mr. Sims for ninety days and assess the costs of the proceeding against him. Unfortunately, the majority opinion rejected the Panel’s recommendation to suspend Mr. Sims’ law license. Instead, the majority concluded that Mr. Sims should simply be reprimanded and required to pay the costs of the disciplinary proceeding. For the reasons set out below, I concur in the decision to impose costs against Mr. Sims. I dissent from the majority’s decision to reject the Panel’s recommendation of a ninety-day suspension of Mr. Sims’ law license.

A. Mr. Sims' Conduct Was Egregious

This Court has recognized “that attorney disciplinary proceedings are primarily designed to protect the public, to reassure it as to the reliability and integrity of attorneys and to safeguard its interest in the administration of justice[.]” *Committee on Legal Ethics of the West Virginia State Bar v. Keenan*, 192 W. Va. 90, 94, 450 S.E.2d 787, 791 (1994). The majority’s decision to not suspend Mr. Sims’ law license constitutes an abandonment of this Court’s duty to reassure the public that we will not tolerate egregious conduct by lawyers that undermines public trust in the legal profession.

In making the determination not to suspend Mr. Sims’ law license, the majority failed to list all of the facts and circumstances forming the basis of the Panel’s recommendation. The majority acknowledged that the Panel’s recommendation was based “upon many of the same facts which provided the foundation for the removal proceeding in which Sims was removed by this Court from the elected office of prosecuting attorney for Logan County.” The majority, however, decided that “[t]he only facts that we need to enumerate in this opinion are those which we did not previously consider.” Consequently, the majority merely recites only those facts surrounding Mr. Sims’ improper use of the media to prejudice cases pending before a grand jury. I strongly suggest that the majority chose to omit all relevant facts in an attempt to legitimize its decision to not suspend Mr. Sims’ law license.

Unlike the majority, I will fully outline the improper conduct that Mr. Sims

engaged in while holding the office of Logan County Prosecutor and upon which the Panel relied to recommend the suspension of his law license. The following conduct by Mr. Sims, relevant to the instant proceeding, was set out in *In re Sims*, 206 W. Va. 213, 215-217, 523 S.E.2d 273, 275-277 (1999) (per curiam), as follows:

[1]. On the 7th day of November, 1997, the Respondent Sims filed with the Circuit Court of Logan County the sworn affidavit which is . . . false and was filed by the Respondent with the intent to deceive;

....

[2]. On the 20th day of April, 1998, the Respondent Sims filed the sworn affidavit which is . . . false and was filed by the Respondent with the intent to deceive;

....

[3]. The Respondent has engaged in a pattern of making improper public statements about pending cases, about defendants, and about prospective cases and prospective defendants:

(i) On March 17, 1998, when Petitioners Grimmett, Porter and other public officials approached the Logan County Commission to inquire about their right to hire outside counsel to represent them in that the Respondent had been making accusations against them and issuing Freedom of Information requests and subpoenas to them for records which were in fact public records, Respondent Sims told the Logan Banner newspaper that "The reason they don't trust me is that they can't control me and most criminals don't trust prosecutors." The above comment is both libelous per se and contrary to the Rules of Professional Conduct as embodied in Rules 3.6 and 3.8;

(ii) On March 16, 1998, Respondent Sims signed

a criminal complaint charging Petitioner Alvis Porter with violating West Virginia Code § 61-5-27, a felony, which charge was subsequently dismissed by a Circuit Judge sitting by designation. Approximately three (3) weeks earlier, in late February 1998, Respondent Sims told the Managing Editor of the Logan Banner newspaper that he was going to charge Mr. Porter with a crime, a violation of Rules 3.6 and 3.8 of the Rules of Professional Conduct. When these same charges were filed, Respondent Sims provided extensive interviews to television and newspaper reporters in further violation of said Rules;

(iii) On October 17 and 19, 1997, Respondent Sims told the Logan Banner newspaper that an investigation from the State Tax Department, identified by Sims as a “special tax commissioner,” was ongoing into practices of the Logan County Assessor’s Office because the county had “one of the highest number of exonerations in the state.” Said comment is false and libelous and was intended by the Respondent to discredit Petitioner Rick Grimmett, who is the Logan County Assessor;

(iv) On March 18, 1998, Respondent Sims told the Logan Banner newspaper that he could not comment on a case before the grand jury because of the requirement of secrecy; however, the Respondent then stated that the case was one in which Petitioner Alvis Porter “had a personal interest, albeit indirectly. . . .” Said comment is a violation of Rule 6 of the West Virginia Rules of Criminal Procedure and of Rule 3.6 of the Rules of Professional Conduct;

[4]. The Respondent has operated his office for political purposes by targeting for investigation those whom he believes to be his political enemies by:

. . . .

(i) Issuing subpoenas for improper purposes and making subpoenas returnable at phantom proceedings, thereby committing the tort of abuse of process;

(ii) Instituting improper criminal charges which were thereafter dismissed, thereby committing the tort of malicious prosecution;

(iii) Instituting improper civil actions. . .

. . . .

[5]. In 1997, Respondent Sims, when angry, made a threat to Logan Magistrate Danny Wells in the Magistrate's office and in the presence of another that he would more vigorously prosecute the Magistrate's son on pending criminal charges after being informed by the Magistrate that he had dismissed a case because the Prosecutor had not timely appeared for a scheduled hearing;

[6]. On various dates between July 1, 1992 and June 30, 1995, Respondent Sims submitted duplicate vouchers to the Circuit Court of Logan County and to the Public Defender Services for payments associated with court-appointed cases. Between July 1995 and January 5, 1998, and including the time after his election to the office of Prosecuting Attorney, the Public Defender Services forwarded demands of repayment for such duplicate payments which Respondent Sims ignored. The acts of duplicate billing and refusal to respond to demands for repayment [on] the part of Respondent Sims constitute larceny and fraud;

[7]. On June 24, 1998, the Respondent did knowingly make false representations to Circuit Judge Roger L. Perry of Logan County in the case of *State v. Robert Adams*, 97-F-62P, when the Respondent denied making statements to the press which were attributed to him in quotes contained in the Logan Banner. . . .

Mr. Sims engaged in the above conduct as an elected official. Such conduct was deemed to justify his removal from office. *See In re: Sims*. However, for lawyer disciplinary purposes, the majority has determined that this same conduct warrants only a reprimand. To

me, this is an unacceptable result. There is simply no justification for permitting Mr. Sims' ability to practice law to go unimpeded after he engaged in such egregious conduct as a public official. Moreover, the majority decision is inconsistent with this Court's holding in syllabus point 3 of *Committee On Legal Ethics of West Virginia State Bar v. Roark*, 181 W. Va. 260, 382 S.E.2d 313 (1989), wherein we held that "[e]thical violations by a lawyer holding a public office are viewed as more egregious because of the betrayal of the public trust attached to the office." See also *Committee on Legal Ethics of the West Virginia State Bar v. White*, 189 W. Va. 135, 428 S.E.2d 556 (1993) (lawyer was prosecuting attorney who pled guilty to possession of cocaine and had his law license suspended for two years); *Committee on Legal Ethics of the West Virginia State Bar v. Boettner*, 188 W. Va. 1, 422 S.E.2d 478 (1992) (lawyer was state senator who pled guilty to evading payment of federal income taxes and had his law license suspended for three years); *Committee on Legal Ethics of West Virginia State Bar v. Grubb*, 187 W. Va. 608, 420 S.E.2d 744 (1992) (lawyer was judge who was convicted in federal court of criminal charges and had his law license annulled); *Committee on Legal Ethics of the West Virginia State Bar v. Moore*, 186 W. Va. 127, 411 S.E.2d 452 (1991) (lawyer pled guilty to criminal acts that grew out of his position as governor and had his law license annulled); *Committee On Legal Ethics of West Virginia State Bar v. Roark*, 181 W. Va. 260, 382 S.E.2d 313 (1989) (lawyer was prosecuting attorney and former mayor who pled guilty to possession of cocaine and had his law license suspended for three years).

The implication of the majority opinion is simple: A lawyer who holds public

office can be assured that, if the lawyer engages in egregious conduct that undermines the integrity of the legal profession and the administration of justice, the lawyer's license will not be adversely affected. This proposition insults the public and casts grave doubt regarding the willingness of this Court to demand that lawyers remain faithful to the Rules of Professional Conduct.

In view of the foregoing, I concur in part and dissent in part.