

The COMMITTEE ON LEGAL ETHICS
OF THE WEST VIRGINIA STATE
BAR, Complainant,

v.

Gregory R. GORRELL, a Member of the
West Virginia Bar Bar, Respondent.

No. 20162.

Supreme Court of Appeals
of West Virginia.

Submitted July 2, 1991.

Decided July 25, 1991.

On recommendation of the Committee on Legal Ethics, the Supreme Court of Appeals held that conviction of 11 counts of federal mail fraud in connection with scheme to siphon money from law partnership warrants annulment of license to practice law.

Licensed annulled.

1. Attorney and Client ⇐58

Conviction of 11 counts of federal mail fraud in connection with scheme to siphon money from law partnership warrants annulment of license to practice law. 18 U.S.C.A. § 1341; State Bar By-Laws, Art. VI, § 25.

2. Attorney and Client ⇐53(2)

In court proceeding initiated by Committee on Legal Ethics of the West Virginia State Bar to annul license of attorney to practice law, burden is on Committee to prove, by full, preponderating and clear evidence, charges contained in Committee's complaint.

3. Attorney and Client ⇐53(2)

Where there has been final criminal conviction, proof on record of such conviction satisfies Committee on Legal Ethics' burden of proving ethical violation arising from such conviction.

4. Attorney and Client ⇐58

Section of By-Laws of the West Virginia State Bar prohibiting crimes involving moral turpitude imposes upon court before

which attorney has been qualified mandatory duty to annul license of such attorney to practice law upon proof that he or she has been convicted of any crime involving moral turpitude. State Bar By-Laws, Art. VI, § 23.

5. Attorney and Client ⇐61

Reinstatement of license to practice law following reversal of criminal conviction does not prohibit or terminate any disciplinary proceeding arising out of criminal charges. State Bar By-Laws, Art. VI, § 25.

Syllabus by the Court

1. "In a court proceeding initiated by the Committee on Legal Ethics of the West Virginia State Bar to annul the license of an attorney to practice law, the burden is on the Committee to prove, by full, preponderating and clear evidence, the charges contained in the Committee's complaint." Syl.Pt. 1, *Committee on Legal Ethics v. Pence*, 216 S.E.2d 236 (W.Va. 1975). Syllabus Point 1, *Committee on Legal Ethics v. Walker*, — W.Va. —, 358 S.E.2d 234 (1987). Syllabus Point 1, *Committee on Legal Ethics v. Six*, — W.Va. —, 380 S.E.2d 219 (1989).

2. "Where there has been a final criminal conviction, proof on the record of such conviction satisfies the Committee on Legal Ethics' burden of proving an ethical violation arising from such conviction." Syllabus Point 2, *Committee on Legal Ethics v. Six*, — W.Va. —, 380 S.E.2d 219 (1989).

3. "Section 23, Part E, Article VI of the By-Laws of the West Virginia State Bar imposes upon any Court before which an attorney has been qualified a mandatory duty to annul the license of such attorney to practice law upon proof that he has been convicted of any crime involving moral turpitude." Point 2, syllabus, *In The Matter of Mann*, 151 W.Va. 644 [154 S.E.2d 860 (1967)]. Syllabus, *In Re Smith*, 158 W.Va. 13, 206 S.E.2d 920 (1974). Syllabus Point 3, *Committee on Legal Ethics v. Six*, — W.Va. —, 380 S.E.2d 219 (1989).

Sherri D. Goodman, West Virginia State Bar, Charleston, for complainant.

P. Rodney Jackson, Di Trapano & Jackson, Charleston, for respondent.

PER CURIAM:

In this proceeding, the West Virginia State Bar asks us to annul Gregory R. Gorrell's license to practice law. This matter was set for hearing on July 2, 1991, and was submitted without the benefit of oral argument.

[1] It is not disputed that on April 4, 1991, the respondent was convicted by a jury of eleven counts of federal mail fraud under 18 U.S.C. § 1341, all of which are felonies. These criminal acts were a part of a scheme to siphon money from Mr. Gorrell's law partnership with the law firm of Jackson & Kelly. The amount alleged in the indictment was in excess of \$360,000.

Through his attorney, the respondent admits these convictions and indicates that an appeal is contemplated. The respondent's only request in his written response, dated June 27, 1991, is that "[i]n the event that the appeal is successful, [the respondent] would desire to reserve the right to petition the Supreme Court of Appeals for reinstatement of his law license."¹

[2-4] Syllabus Points 1, 2, and 3 of *Committee on Legal Ethics v. Six*, — W.Va. —, 380 S.E.2d 219 (1989), serve to outline the relevant principles in a case to annul an attorney's license:

"1. "In a court proceeding initiated by the Committee on Legal Ethics of the West Virginia State Bar to annul the license of an attorney to practice law, the burden is on the Committee to prove, by

1. In an earlier response dated May 8, 1991, the respondent reserved the right to a mitigation hearing; however, this has apparently been abandoned. Even if it were not, it is doubtful that the respondent would be entitled to a mitigation hearing under Syllabus Point 3 of *Committee on Legal Ethics v. Folio*, — W.Va. —, 401 S.E.2d 248 (1990). The respondent also wanted to argue the effective date of his annulment, pointing out that he has not practiced law since 1989. However, this is controlled by *Committee on Legal Ethics v. Six*, — W.Va. —, 380 S.E.2d 219 (1989), where we held that time

full, preponderating and clear evidence, the charges contained in the Committee's complaint." Syl.Pt. 1, *Committee on Legal Ethics v. Pence*, 216 S.E.2d 236 (W.Va.1975). Syllabus Point 1, *Committee on Legal Ethics v. Walker*, — W.Va. —, 358 S.E.2d 234 (1987).

"2. Where there has been a final criminal conviction, proof on the record of such conviction satisfies the Committee on Legal Ethics' burden of proving an ethical violation arising from such conviction.

"3. "Section 23, Part E, Article VI of the By-Laws of the West Virginia State Bar imposes upon any Court before which an attorney has been qualified a mandatory duty to annul the license of such attorney to practice law upon proof that he has been convicted of any crime involving moral turpitude." Point 2, syllabus, *In The Matter of Mann*, 151 W.Va. 644 [154 S.E.2d 860 (1967)]. Syllabus, *In Re Smith*, 158 W.Va. 13, 206 S.E.2d 920 (1974)."

We have held that the crime of federal mail fraud is a crime involving moral turpitude. *In Re Berzito*, 156 W.Va. 201, 192 S.E.2d 227 (1972); *In Re West*, 155 W.Va. 648, 186 S.E.2d 776 (1972).

[5] Article VI, Section 25 of the By-Laws of the West Virginia State Bar provides that if an attorney is convicted of a criminal offense and his license is suspended or annulled and the conviction is subsequently reversed, the attorney is entitled to have his license reinstated. However, such reinstatement does not prohibit or terminate any disciplinary proceeding arising out of the criminal charges.² It is rather uni-

spent on a voluntary withdrawal from the practice of law would not be credited on an annulment absent compliance with Article VI, Section 33 of the By-Laws of the West Virginia State Bar.

2. The relevant language of Section 25 of Article VI of the Bar By-Laws states:

"Where a conviction is reversed upon appeal the license of such attorney shall be reinstated but the reinstatement shall not terminate any formal proceeding then pending against the attorney, the disposition of which

COMMITTEE ON LEGAL ETHICS v. GORRELL W. Va. 925

Cite as 407 S.E.2d 923 (W.Va. 1991)

formly held that an acquittal on a criminal charge does not preclude disciplinary charges on the same facts. This is because the parties are different and the standard or burden of proof is different. *See generally* 7 Am.Jur.2d *Attorneys at Law* § 83 (1980); Annot., 76 A.L.R.3d 1028 (1977).

BROTHERTON, J., deeming himself disqualified, did not participate in the consideration or decision of this case.

For the foregoing reasons, the license of Gregory R. Gorrell to practice law in the State of West Virginia is hereby annulled.

License Annulled.

shall be determined by the committee on legal

ethics on the basis of the available evidence."



WEST VIRGINIA
RECORDS
DEPARTMENT
MARTINSBURG, W. VA. 26101
1-800-541-4242

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 1991 Term

FILED

JUL 25 1991

No. 20162

THE COMMITTEE ON LEGAL ETHICS
OF THE WEST VIRGINIA STATE BAR
Complainant

Amelia J. Ramsey
CLERK OF THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

v.

GREGORY R. GORRELL, A MEMBER
OF THE WEST VIRGINIA BAR BAR,
Respondent

Recommendation of the Committee on Legal Ethics
L.E.C. No. 89-340

License Annulled

Submitted: July 2, 1991
Filed: July 25, 1991

Sherri D. Goodman
West Virginia State Bar
Charleston, West Virginia
Attorney for the Complainant

P. Rodney Jackson
Di Trapano & Jackson
Charleston, West Virginia
Attorney for the Respondent

The Opinion of the Court was delivered PER CURIAM.

Justice Brotherton, deeming himself disqualified, did not participate in the consideration or decision of this case.

SYLLABUS BY THE COURT

1. ""In a court proceeding initiated by the Committee on Legal Ethics of the West Virginia State Bar to annul the license of an attorney to practice law, the burden is on the Committee to prove, by full, preponderating and clear evidence, the charges contained in the Committee's complaint." Syl. Pt. 1, Committee on Legal Ethics v. Pence, 216 S.E.2d 236 (W. Va. 1975).' Syllabus Point 1, Committee on Legal Ethics v. Walker, ___ W. Va. ___, 358 S.E.2d 234 (1987)." Syllabus Point 1, Committee on Legal Ethics v. Six, ___ W. Va. ___, 380 S.E.2d 219 (1989).

2. "Where there has been a final criminal conviction, proof on the record of such conviction satisfies the Committee on Legal Ethics' burden of proving an ethical violation arising from such conviction." Syllabus Point 2, Committee on Legal Ethics v. Six, ___ W. Va. ___, 380 S.E.2d 219 (1989).

3. ""Section 23, Part E, Article VI of the By-Laws of the West Virginia State Bar imposes upon any Court before which an attorney has been qualified a mandatory duty to annul the license of such attorney to practice law upon proof that he has been convicted of any crime involving moral turpitude." Point 2, syllabus, In The Matter of Mann, 151 W. Va. 644 [154 S.E.2d 860 (1967)].' Syllabus, In Re Smith, 158 W. Va. 13, 206 S.E.2d 920 (1974)." Syllabus Point 3, Committee on Legal Ethics v. Six, ___ W. Va. ___, 380 S.E.2d 219 (1989).

Per Curiam:

In this proceeding, the West Virginia State Bar asks us to annul Gregory R. Gorrell's license to practice law. This matter was set for hearing on July 2, 1991, and was submitted without the benefit of oral argument.

It is not disputed that on April 4, 1991, the respondent was convicted by a jury of eleven counts of federal mail fraud under 18 U.S.C. § 1341, all of which are felonies. These criminal acts were a part of a scheme to siphon money from Mr. Gorrell's law partnership with the law firm of Jackson & Kelly. The amount alleged in the indictment was in excess of \$360,000.

Through his attorney, the respondent admits these convictions and indicates that an appeal is contemplated. The respondent's only request in his written response, dated June 27, 1991, is that "[i]n the event that the appeal is successful, [the respondent] would desire to reserve the right to petition the Supreme Court of Appeals for reinstatement of his law license."¹

¹In an earlier response dated May 8, 1991, the respondent reserved the right to a mitigation hearing; however, this has apparently been abandoned. Even if it were not, it is doubtful that the respondent would be entitled to a mitigation hearing under Syllabus Point 3 of Committee on Legal Ethics v. Folio, ___ W. Va. ___, 401 S.E.2d 248 (1990). The respondent also wanted to argue the effective date of his annulment, pointing out that he has not practiced law since 1989. However, this is controlled by Committee on Legal Ethics v. Six, ___ W. Va. ___, 380 S.E.2d 219 (1989), where we held that time spent on
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"1. 'In a court proceeding initiated by the Committee on Legal Ethics of the West Virginia State Bar to annul the license of an attorney to practice law, the burden is on the Committee to prove, by full, preponderating and clear evidence, the charges contained in the Committee's complaint." Syl. Pt. 1, Committee on Legal Ethics v. Pence, 216 S.E.2d 236 (W. Va. 1975).' Syllabus Point 1, Committee on Legal Ethics v. Walker, ___ W. Va. ___, 358 S.E.2d 234 (1987).

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We have held that the crime of federal mail fraud is a crime involving moral turpitude. In Re Berzito, 156 W. Va. 201, 192 S.E.2d 227 (1972); In Re West, 155 W. Va. 648, 186 S.E.2d 776 (1972).

¹(...continued)

a voluntary withdrawal from the practice of law would not be credited on an annulment absent compliance with Article VI, Section 33 of the By-Laws of the West Virginia State Bar.

Article VI, Section 25 of the By-Laws of the West Virginia State Bar provides that if an attorney is convicted of a criminal offense and his license is suspended or annulled and the conviction is subsequently reversed, the attorney is entitled to have his license reinstated. However, such reinstatement does not prohibit or terminate any disciplinary proceeding arising out of the criminal charges.² It is rather uniformly held that an acquittal on a criminal charge does not preclude disciplinary charges on the same facts. This is because the parties are different and the standard or burden of proof is different. See generally 7 Am. Jur. 2d Attorneys at Law § 83 (1980); Annot., 76 A.L.R.3d 1028 (1977).

For the foregoing reasons, the license of Gregory R. Gorrell to practice law in the State of West Virginia is hereby annulled.

License Annulled.

²The relevant language of Section 25 of Article VI of the Bar By-Laws states:

"Where a conviction is reversed upon appeal the license of such attorney shall be reinstated but the reinstatement shall not terminate any formal proceeding then pending against the attorney, the disposition of which shall be determined by the committee on legal ethics on the basis of the available evidence."

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 25th day of July, 1991, the following order was made and entered:

The Committee on Legal Ethics of The West Virginia State Bar, Complainant

vs.) No. 20162

Gregory R. Gorrell, a member of The West Virginia State Bar, Respondent

The Court, having maturely considered the verified complaint filed by the Committee on Legal Ethics of The West Virginia State Bar, along with a copy of the Indictment entered on the 16th day of November, 1990, in the United States District Court for the Southern District of West Virginia, Action No. 2:90-00298, and the briefs of counsel thereon, is of opinion for reasons stated in writing and filed with the record that the respondent, Gregory R. Gorrell, has been guilty of violating Rule 8.4 of the Rules of Professional Conduct, and his license to practice law in the State of West Virginia should be annulled.

Accordingly, it is therefore adjudged and ordered that the license and authority of the respondent, Gregory R. Gorrell, to practice law in the State of West Virginia, be, and the same is hereby revoked and annulled.

The syllabus of points adjudicated, prefixed to the written opinion prepared Per Curiam, was concurred in by

Chief Justice Miller and Justices McHugh, Workman and Neely.
Justice Brotherton deemed himself disqualified.

Service of a copy of this order upon the
respondent by certified mail, return receipt requested, shall
constitute sufficient notice of the contents hereof.

A True Copy

Attest: 
Clerk, Supreme Court of Appeals

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 9th day of May, 1991, the following order was made and entered:

The Committee on Legal Ethics of The
West Virginia State Bar, Complainant

vs.) No. 20162

Gregory R. Gorrell, a member of The West
Virginia State Bar, Respondent

On a former day, to-wit, May 8, 1991, came the respondent, Gregory R. Gorrell, a member of The West Virginia State Bar, by diTrapano & Jackson, and P. Rodney Jackson, his attorneys, and presented to the Court his petition for voluntary suspension of his license to practice law in the State of West Virginia, effective from the 5th day of April, 1991, pending his petition for appeal to the Court of Appeals for the Fourth Circuit, reserving his right to request a mitigation hearing and his right to argue the effective date of any annulment ordered by this Court.

Upon consideration whereof, the Court is of opinion to and doth hereby grant the respondent's petition for voluntary suspension of his license to practice law in the State of West Virginia, effective from the 5th day of April, 1991. It is therefore ordered that the license of the respondent to practice law in the State of West Virginia be, and the same hereby is, suspended, effective from the 5th day of April 1991, pending resolution of the annulment proceedings scheduled for

hearing before this Court on the 2nd day of July, 1991; all of which is ordered to be certified to The West Virginia State Bar. Justice Brotherton deemed himself disqualified.

A True Copy

Attest:


Clerk, Supreme Court of Appeals