

Per Curiam:

FILED

OCT 31 1991.

The Committee On Legal Ethics of
The West Virginia State Bar

No. 20238 v.

Morris E. Mowery, a member of
The West Virginia State Bar

Anita H. Kinney
CLERK OF THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

The Committee on Legal Ethics of the West Virginia State Bar, in this legal proceeding, has recommended that the respondent, Morris E. Mowery, an attorney licensed to practice law in West Virginia, be publicly reprimanded for failing to return a client's file in a timely manner. The Committee claims that the failure to return the file constitutes a violation of the former DR 2-110(A)(2) which was in effect at the time of the respondent's act and supports the issuance of the reprimand sought. After considering the questions presented, this Court agrees.

The respondent, Morris E. Mowery, undertook to represent a client named Paul L. Slack in a civil rights action in federal court. The respondent took a number of steps to represent Mr. Slack, but Mr. Slack's action was dismissed by a federal judge on November 12, 1987.

Subsequent to the dismissal of the action, Mr. Slack dismissed the respondent as his attorney on March 14, 1988, and requested that the respondent return documents relating to his

case. The respondent failed to return the documents, and Mr. Slack again contacted him. When the respondent again failed to produce the documents, Mr. Slack, on May 24, 1988, filed a complaint with the West Virginia State Bar.

Counsel for the West Virginia State Bar contacted the respondent on a number of occasions about returning Mr. Slack's documents, and it appears that the respondent indicated that he would return the documents. The respondent, however, failed to return them, and, at length, the West Virginia State Bar submitted the matter to its Committee on Legal Ethics for appropriate action.

The Committee on Legal Ethics investigated the matter, and in the course of the investigation the respondent admitted that he had failed to return Mr. Slack's file as charged. He, however, denied that Mr. Slack had been prejudiced by his action.

At the conclusion of its investigation, the Committee on Legal Ethics concluded that by failing to return Mr. Slack's file, the respondent had violated DR 2-110(A)(2), which was in effect at the time of the respondent's action, and which states:

In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

The Committee also found that the appropriate discipline in the matter was public reprimand. As previously indicated, the Committee has recommended that this Court now impose that sanction on the respondent.

This Court has recognized that in a legal ethics disciplinary proceeding the burden is on the Committee of Legal Ethics to prove its charges against the attorney by full, preponderating, and clear evidence. Committee on Legal Ethics of West Virginia State Bar v. Lewis, ___ W.Va. ___, 371 S.E.2d 92 (1988); Committee on Legal Ethics of West Virginia State Bar v. White, ___ W.Va. ___, 349 S.E.2d 919 (1986); Committee on Legal Ethics of West Virginia State Bar v. Pence, 161 W.Va. 240, 240 S.E.2d 668 (1977).

In the present case, the Court believes, and in fact the respondent admitted, that he failed to return Mr. Slack's file as charged. Further, in the somewhat similar case of Committee on Legal Ethics of the West Virginia State Bar v. Hazlett, ___ W.Va. ___, 367 S.E.2d 772 (1988), the Court found that an attorney's failure to return a client's file after the conclusion of his employment could support imposition of a reprimand. In that case the Court publicly reprimanded the attorney involved.

In view of these facts, as well as in view of the fact that the respondent has, in effect, agreed that a public reprimand

is appropriate, this Court concludes that the respondent should be publicly reprimanded for failing to return Mr. Slack's file.

It is, therefore, Ordered that the respondent, Morris E. Mowery, be, and he hereby is, publicly reprimanded for violating the West Virginia Code of Professional Responsibility. The respondent is further Ordered to reimburse the Committee for actual and necessary expenses incurred by it in connection with this proceeding. See State Bar By-laws, art. VI, § 20 (1986); Committee on Legal Ethics of the West Virginia State Bar v. Tatterson, ___ W.Va.. ___, 352 S.E.2d 107 (1986).