

Per Curiam:

The Committee on Legal Ethics  
of the West Virginia State Bar

No. 21518 v.

Paul Cowgill, Jr., a member of  
the West Virginia State Bar

**FILED**

FEB 24 1993

*Anita R. Ramsey*  
CLERK OF THE  
SUPREME COURT OF APPEALS  
WEST VIRGINIA

In this legal ethics proceeding, the Committee on Legal Ethics of the West Virginia State Bar claims that the respondent, Paul M. Cowgill, Jr., has violated the Rules of the Code of Professional Conduct, as well as certain Disciplinary Rules of the Code of Professional Responsibility, by making false statements to the Circuit Court of Doddridge County. The Committee on Legal Ethics has recommended that the respondent be strongly reprimanded for his unethical conduct and that he be ordered to pay the costs of this proceeding.

After reviewing the documents filed, as well as the questions raised, this Court finds that the respondent has violated the Rules of Professional Conduct and Disciplinary Rules as alleged by the Committee on Legal Ethics. The Court, however, disagrees with the recommendation that the respondent be reprimanded and concludes that it is appropriate that his license to practice law be suspended for a period of six months.

Documents filed by the Committee on Legal Ethics in this case indicate that the respondent, Paul M. Cowgill, Jr., was appointed by the Circuit Court of Doddridge County to represent Jackie Lee Smarr in a felony proceeding. Mr. Smarr was subsequently convicted of the felony, and the respondent was responsible for prosecuting an appeal on his behalf. The Committee on Legal Ethics further alleges that, in connection with Mr. Smarr's appeal, the respondent on three occasions, on September 29, 1987, September 26, 1989, and January 23, 1990, told the judge of the Circuit Court of Doddridge County, at the calling of the court's criminal docket, that Mr. Smarr's conviction had been appealed to the Supreme Court of Appeals and that the appeal was pending. According to the Committee on Legal Ethics, on each occasion the respondent, contrary to his representations, had not filed an appeal and knew that no appeal had been made to the Supreme Court of Appeals as represented to the circuit court.

When it was subsequently learned that no appeal had been taken, the circuit court held the respondent in contempt of court and ordered him to pay a fine of \$500.00.

In the proceedings before the Committee on Legal Ethics, the respondent essentially admitted the charges against him and waived a full evidentiary hearing.

In findings included in its recommended decision, the Committee on Legal Ethics concluded that the respondent's knowingly false statements to the circuit court constituted a violation of Rule 3.3(a)(1) of the Rules of Professional Conduct, which provides that "[a] lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal." The decision also suggests that the respondent's statement of September 29, 1987, violated DR 7-102(A)(5) of the Code of Professional Responsibility which was then in effect and that the respondent's statements of September 26, 1989, and January 23, 1990, also violated Rule 8.4(c) and Rule 8.4(d) of the Rules of Professional Conduct, which superseded the Code of Professional Responsibility, and which provide:

It is professional misconduct for a lawyer to:  
    . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice . . . .

The recommended decision recognizes that violation of Rule 3.3(a)(1) should, in itself, ordinarily lead to a suspension from the practice of law. In spite of this, the Committee on Legal Ethics has suggested that the facts in the present case suggest that the sanction imposed against the respondent should be somewhat less harsh. The recommended decision notes that the respondent has had no prior record of ethical misconduct and that he has been forthright, contrite, and remorseful in regard to his conduct. The record also suggests that he had no selfish or self-serving motive

for his misconduct and that he is a valuable member of the Bar in rural counties which are short of adequate legal services for the poor and that he has an excellent record for unselfish, zealous, honest, and competent representation of his clients, many of whom are poor and many of whom would have no other representation. The recommended decision also suggests that the sanction of suspending the respondent would deprive several rural counties of much needed legal services.

After considering the documents filed, this Court concludes that they do show that the respondent violated the Rules of Professional Conduct and that the violation of Rule 3.3(a)(1) ordinarily does lead to a suspension from the practice of law.

While this Court is mindful of the facts presented to support the mitigation of the sanction in this case, the Court also recognizes that:

This Court is the final arbiter of legal ethics problems and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys' licenses to practice law.

Syllabus point 3, Committee on Legal Ethics v. Blair, 174 W.Va. 494, 327 S.E.2d 671 (1984), cert. denied, 470 U.S. 1028, 105 S.Ct. 1395, 84 L.Ed.2d 783 (1985). The Court also notes that in syllabus point 3 of Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987), it is stated that:

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 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.

In the present case, the Court notes that the respondent made intentional misrepresentations to the Circuit Court of Doddridge County, not once, but three times, and that the misrepresentations were made in direct response to a judge's questions asked in an attempt to assure that a criminal defendant be afforded a meaningful appeal.

In this Court's view, the circumstances of the case suggest that the appropriate sanction for the respondent's actions is the suspension of his license to practice law for the period of six months. The Court believes that such a sanction is necessary to deter other members of the Bar and to restore public confidence in the ethical standards of the legal profession.

It is, therefore, Adjudged and Ordered that the respondent be, and he hereby is, suspended from the practice of law in the State of West Virginia for the period of six months from the date of the entry of this order. It is further Ordered that the respondent be directed to pay the charges of the Committee on Legal Ethics, as itemized in the Certificate of Expenses prepared on

December 30, 1992, by Charles M. Love, III, Chairman of the Committee on Legal Ethics.

Chief Justice Workman and Justice Brotherton dissent from the sanction imposed and would suspend the respondent from the practice of law for the period of one year.

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 6th day of May, 1993, the following order was made and entered:

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

vs.) No. 21518

Paul Cowgill, Jr., a member of The West  
Virginia State Bar, Respondent

The Court, having maturely considered the petition for rehearing and reargument filed in the above-captioned case, is of opinion to, and doth hereby deny the prayer of the petitioner and doth order that the final order entered herein be made absolute and certified as heretofore directed.

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 24th day of February, 1993, the following order was made and entered:

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

vs.) No. 21518

Paul Cowgill, Jr., a member of The West Virginia State Bar, Respondent

The Court handed down a prepared order today suspending the respondent, Paul Cowgill, Jr., from the practice of law in the State of West Virginia for a period of six months from the date of the entry of this order. It is further ordered that the respondent reimburse the Committee on Legal Ethics of The West Virginia State Bar in the amount of actual and necessary expenses incurred in the investigation of this proceeding, as itemized in the Certificate of Expenses prepared on the 30th day of December, 1992, by Charles M. Love, III, Chairman of the Committee on Legal Ethics.

Chief Justice Workman and Justice Brotherton dissent from the sanction imposed and would suspend the respondent from the practice of law in the State of West



Virginia for the period of one year.

Service of an attested copy of this order upon the respondent aforesaid shall have the same effect as the service of a formal writ.

A True Copy

Attest:

  
Clerk, Supreme Court of Appeals