

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 23rd day of June, 1993, the following order was made and entered:

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

vs.) No. 21769

**Barbara H. Lupton, a member of The West
Virginia State Bar, Respondent**

On a former day, to-wit, June 11, 1993, came the respondent, Barbara H. Lupton, a member of The West Virginia State Bar, by Michael C. Allen, her attorney, and presented to the Court her motion in writing for leave to waive the filing of a brief and oral argument scheduled for Tuesday, the 14th day of September, 1993, for the entry of an order issuing a public reprimand of the respondent, Barbara H. Lupton, requiring status conferences with a designated peer, requiring continued counseling, and requiring reimbursement to The West Virginia State Bar in the amount of the actual and necessary expenses incurred by the Committee on Legal Ethics in the investigation and hearing of this matter in the amount of Seven Hundred Sixty-One Dollars and Eight Cents (\$761.08).

It is hereby considered and ordered that a public reprimand of the respondent doth hereby issue. It is further ordered that respondent engage in status conferences with a designated peer and undergo continuing counseling to be approved and monitored by The West Virginia State Bar.

It is finally considered and ordered that the respondent reimburse the Committee on Legal Ethics of The West Virginia State Bar for the

costs incurred in the investigation and hearing of this matter in the amount of Seven Hundred Sixty-One Dollars and Eight Cents (\$761.08).

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

A True Copy

Attest:



Clerk, Supreme Court of Appeals

**BEFORE THE COMMITTEE ON LEGAL ETHICS
OF THE
WEST VIRGINIA STATE BAR**

**In Re: BARBARA H. LUPTON, ESQ., a member I.D. No. 92-079
of the West Virginia State Bar**

ORDER

On the 9th day of January, 1993, a hearing was held with respect to the above-captioned disciplinary matter at the State Bar Center in Charleston, West Virginia. Present were the Respondent, Barbara H. Lupton, in person, and by her counsel, Michael C. Allen, special counsel for The West Virginia State Bar, Erwin L. Conrad, Sub-committee Chairman, R. Kemp Morton, and Sub-committee Members, Charles M. Love, III , and Priscilla Haden, the Complainant, Carolyn J. McCollam.

As a preliminary matter, the panel bifurcated Count I of the Statement of Charges. Whereupon, the State Bar presented evidence in support of the charges contained in Count I of the Statement and rested its case.

Next, Messrs. Conrad and Allen represented to the Subcommittee that the parties had reached the following stipulations:

1. That the Respondent will not contest the finding of the Subcommittee of client neglect on the part of the Respondent, in violation of D. R. 6-101(A)3 with respect to the matter entrusted to the Respondent by Carolyn J. McCollam and that the Statement of Charges may be and are hereby agreed amended to allege a violation of D. R. 6-101(A)3. The Complainant, Carolyn J. McCollam agreed to

the recommendation of the Sub-committee.

2. The Respondent has submitted the following information in mitigation of discipline:

a. Ms. Lupton has been under psychiatric care for depression for approximately six years.

b. In June, 1986, Ms. Lupton's father died suddenly and unexpectedly. Her grief was profound and lasting.

c. In November, 1985, Ms. Lupton filed a Chapter 13 bankruptcy which was reported in a highly unfavorable light, in several newspaper articles. She lost her home. She was humiliated and felt increasingly alienated from the other members of her law firm, who felt that one bankruptcy gave "leverage" to one of her creditors, Stanley E. Preiser, in litigation then pending between him and her law firm. The strain broke up her marriage of 21 years. One of her children (who also suffers from severe depression) attempted suicide.

d. In her divorce proceedings, Ms. Lupton assumed total responsibility for repayment of creditors in one Chapter 13 Bankruptcy. She filed a 100% payment plan and paid \$1,860.00 per month to the trust for approximately four years. The entire debt was paid.

e. During the years in which Ms. Lupton was paying the bankruptcy, she was also paying income taxes on substantial amounts of "phantom income" attributable to her as a law firm partner. She was supporting her older daughter who had moved to Philadelphia

with her ex-husband, as well as herself and her younger daughter. The financial strain of all these obligations was enormous.

f. By late spring or early summer of 1989, Ms. Lupton's depression had become severe. Her physician suggested that she take a leave of absence from her employment. During this leave of absence her doctor found a type and dosage of antidepressant that relieved the severity of the depression.

g. Ms. Lupton returned to work at Hunt & Wilson, she felt increasingly isolated. Missed paychecks in 1990 increased the financial pressure on her to an intolerable level.

h. Ms. Lupton finally resigned from Hunt & Wilson as of January 15, 1991. She joined Masters & Taylor the following day, where she still works as an employee.

The evidence in mitigation has been received, reviewed and considered by the Sub-committee, which makes no finding with regard to the accuracy of the information submitted in mitigation, and was considered by the Committee in determining the appropriate level of discipline to recommend to the Supreme Court of Appeals. The Respondent will not contest this recommendation.

3. That the Sub-committee will make a recommendation to the Legal Ethics Committee that the Respondent receive a public reprimand from the Supreme Court of Appeals and the Respondent agreed to abide by the following conditions for a one (1) year period, beginning on the date of the approval of this recommendation by the Supreme Court of Appeals. The Complainant

agreed to the level of discipline recommended by the Sub-committee.

a. The Respondent will telephone William Druckman once a week to discuss her status. Mr. Druckman will file a report with the Committee on the Respondent's status at the end of each year. If the Respondent fails to telephone Mr. Druckman for two consecutive weeks, Mr. Druckman will report that fact to the Committee.

b. The Respondent will continue her treatment with Gina Pizola, who will monitor her progress and make reports to the Committee on a quarterly basis.

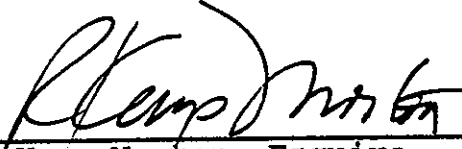
4. The Sub-committee will recommend to The Legal Ethics Committee that all charges contained in Count II of the Statement of Charges be dismissed, conditioned upon the Respondent meeting her obligations under this agreement. Should the Respondent fail to meet her obligations under this agreement then the Committee will hold further hearings in the matter.

5. The Respondent will pay the costs of this disciplinary proceeding.

6. The Sub-committee is of the opinion, that in view of the fact that all of the above has been agreed to by special counsel for the State Bar, counsel for the Respondent, The Respondent and the Complainant, that the interests of justice, the objects and purposes of the disciplinary system and the protection of the


public have all been served by its recommended disposition in this disciplinary matter.

Signed this 17 day of April, 1993.




R. Kemp Morton, Esquire
Sub-committee Chairman

AGREED AND APPROVED BY:



Erwin L. Conrad, Special Bar Counsel



Michael C. Allen, Counsel for Respondent

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

IN RE: BARBARA H. LUPTON, a member of
The West Virginia State Bar

I. D. No. 92-079

STATEMENT OF CHARGES

TO: Barbara H. Lupton
Masters & Taylor, L.C.
416 Peoples Building
Charleston, West Virginia 25311

YOU ARE HEREBY notified that the Hearing Panel of the Committee on Legal Ethics of the West Virginia State Bar will hold a hearing pursuant to Article VI, Section 13 of the By-Laws of The West Virginia State Bar upon the following charges against you:

COUNT I

1. Barbara H. Lupton, formerly Barbara H. Fleisher ("Respondent") is a licensed member of the West Virginia State Bar who practices in Kanawha County, West Virginia and, as such, is subject to the disciplinary jurisdiction of the West Virginia Supreme Court of Appeals and its properly constituted Committee on Legal Ethics of The West Virginia State Bar ("Committee").

2. Ms. Carolyn J. McCollam retained Respondent to represent McCollam in instituting civil litigation against Christopher S. Butch, Esq., at times relevant, counsel to Handi Dogs of West Virginia, et al, concerning Ms. McCollam's arrest on felony charges of grand larceny concerning a dispute over two (2) dogs (charges against McCollam were dismissed).

3. Respondent misrepresented to Ms. McCollam that a Civil Action had been filed on behalf of Ms. McCollam concerning the subject matter of paragraph 2 above.

4. Respondent, as counsel to Ms. McCollam, misrepresented to the West Virginia State Bar Assistant Disciplinary Counsel, Cynthia Santoro Gustke, by letter of September 19, 1988, that she "is instituting litigation concerning the matters (herein referenced in paragraph 2) which gave rise to the complaint against Mr. Butch". (Exhibit 1 annexed).

5. Contrary to the representations made by Respondent to Ms. McCollam and Assistant Disciplinary Counsel, Respondent did not file the Civil Action and allowed the applicable statute of limitations to pass.

6. Respondent's conduct in (1) providing false and/or misleading information to Ms. McCollam that Respondent had filed, civil litigation and (2) providing false and/or misleading information to the Committee on Legal Ethics of the West Virginia State Bar as represented by the September 19, 1988 letter to Assistant Disciplinary Counsel, Gustke, indicating that Respondent was about to file litigation on behalf of Complainant constitute violations of West Virginia Rules of Professional Conduct, Rule 8.4 - Misconduct:

"professional misconduct for a lawyer to: . .

(c) engage in conduct involving dishonesty,
fraud, deceit or misrepresentation; . . ."

COUNT II

Each allegation of facts set forth in paragraphs 1 through 6 in Counts I of this Statement of Charges is hereby repeated and realleged in this Count II, by this reference, as if fully repeated herein.

7. On February 21, 1992, the Committee on Legal Ethics of the West Virginia State Bar received a complaint from Carolyn J. McCollam concerning the above-referenced attorney. Complainant alleged that Respondent had undertaken representation of the Complainant and in connection with that representation had:

(a) improperly advised the Legal Ethics Committee of the State Bar to dismiss the pending ethics complaint against Christopher Butch (ID No. 87-290);

(b) misrepresented to the Complainant that a Civil Action had been filed on behalf of the Complainant against Christopher Butch, et al;

(c) contrary to the representations made to the Complainant by the Respondent failed to file a Civil Action against Christopher Butch, et al within the time permissible pursuant to the statute of limitations concerning such matters;

(d) provided false information concerning the filing of said Civil Action to the Legal Ethics Committee of the State Bar.

8. By letter of May 21, 1992, the complaint was forwarded to the Respondent together with twelve questions to be answered by Respondent. (See May 21, 1992 letter annexed).

9. On June 22, 1992, a second letter was forwarded to the Respondent requesting, again, the information sought in the May 21, 1992 letter. (See June 22, 1992 letter annexed).

10. The Respondent did not respond to the May 21 or June 22 letters. By letter of July 17, 1992, the Respondent was advised of the recent decision by the Supreme Court of Appeals of West Virginia, Committee on Legal Ethics vs. Martin 20859 wherein the Court stated that:

(1) An attorney violates Rule of Professional conduct 8.1(b) by failing to respond to requests of the West Virginia State Bar concerning allegations in a disciplinary complaint . . . (See July 17, 1992 letter annexed)

11. Respondent's conduct in failing to respond to requests of the West Virginia State Bar of May 21, 1992 and June 22, 1992 concerning allegations in the disciplinary proceeding constitute violations of West Virginia Rules of Professional Conduct, Rule 8.1(b)

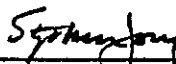
" . . . a lawyer . . . in connection with a disciplinary matter, shall not:

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to lawful demand for information from . . . disciplinary authority"

Pursuant to Article VI, Section 12(b) of the By-Laws, the Investigative Panel has found that probable cause exists to hold a hearing with respect to the charges described hereinabove and has issued this Statement of Charges.

The hearing in this matter will be held pursuant to the provisions of Article VI, Part C of the By-Laws. Under the provisions of Article VI, Section 14(a) of said By-Laws, you are required to file an Answer to the foregoing charges within 30 days of service of this Statement of Charges.

Dated this 7th day of October, 1992.



Stephen Jery, Chairman
Investigative Panel
Committee on Legal Ethics
The West Virginia State Bar