

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 26th day of March, 1993, the following order was made and entered:

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

vs.) No. 21507

Paul W. McCreight, a member of The West Virginia State Bar, Respondent

The Court today handed down a prepared order suspending the license to practice law in the State of West Virginia of the respondent, Paul W. McCreight, for a period of two months, during which time counsel for the complainant, the Committee on Legal Ethics of the West Virginia State Bar, will review the respondent's practice habits in order that reinstatement can be expedited if requested and found to be warranted. It is further ordered that the respondent reimburse the Committee on Legal Ethics of The West Virginia State Bar for the actual and necessary expenses incurred in the investigation and litigation of this matter in the amount of One Hundred Fifty-Seven Dollars (\$157.00). It is finally ordered that all continuing legal education requirements must be met as a condition to the respondent's reinstatement.

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

A handwritten signature in black ink, appearing to read "Anil K. Ramesh", written over a horizontal line.

Attest: Clerk, Supreme Court of Appeals

Per Curiam:

The Committee on Legal Ethics of
The West Virginia State Bar

No. 21507 v.

Paul W. McCreight,
A Member of the West Virginia State Bar

FILED

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CLERK OF THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

The Committee on Legal Ethics has requested this Court to suspend the law license of attorney Paul W. McCreight for a period of two months. Further, the Committee has recommended that Mr. McCreight allow Bar Counsel to review his current practice habits during a two-month suspension in order that reinstatement could be expedited if requested and found appropriate. We adopt the recommendations of the Committee and hereby impose the discipline suggested.

I.

Subsequent to the July 23, 1985, death of his father, Charles W. Brown of Lansing, Michigan, requested Mr. McCreight's assistance in handling his father's estate. Mr. McCreight was provided with a partially completed appraisement form, bank statements, and the most recent income tax return. Mr. McCreight failed to file the estate appraisement and inventory form and failed to initiate any other action necessary to complete the estate matters. In November 1985, Mr. Brown met with Mr. McCreight to discuss Mr. McCreight's

inactivity. Mr. Brown again met with Mr. McCreight in the summer of 1986 and in 1987. During his 1987 visit, Mr. Brown requested that Mr. McCreight return the estate documents in order that other counsel could be retained. Mr. McCreight then admitted that he did not have the documents.

On April 6, 1987, the Investigative Panel of the Committee on Legal Ethics received an ethics complaint by Mr. Brown against Mr. McCreight, seeking the return of documents which had been provided to Mr. McCreight. Bar Counsel thereafter contacted Mr. McCreight on several occasions and was informed by Mr. McCreight that a response to the ethics complaint would be forthcoming. By October 23, 1987, no response had been received. Pursuant to a subpoena subsequently served on Mr. McCreight, Mr. McCreight met with Bar Counsel on November 24, 1987. He explained that although the client had provided various estate papers, he was awaiting additional information necessary to prepare the appraisement forms. During that meeting, Mr. McCreight informed Bar Counsel that he would prepare a response to the ethics complaint within two weeks.

Having received no response, Bar Counsel subpoenaed Mr. McCreight to appear again on April 6, 1988. During that meeting, Mr. McCreight promised to provide an appraisement by the end of April 1988. On October 18, 1989, Mr. McCreight informed Bar Counsel that he had probably lost the documents. Mr. McCreight was

again subpoenaed to appear before Bar Counsel on February 5, 1990. During that meeting, Mr. McCreight explained that the only documents he received had been copies and not originals. Mr. Brown thereafter returned to Huntington to reconstruct the estate documents necessary for the transfer of the case to another attorney.

On February 29, 1992, a hearing was conducted before the Hearing Panel of the Committee on Legal Ethics. Mr. McCreight testified that he was a sole practitioner and had not intentionally committed any misconduct. Additionally, Mr. McCreight suggested that the estate papers may have been lost in August 1985 when he changed the location of his office. He also believed that his actions may have been influenced by the death of his wife on April 21, 1985. Furthermore, Mr. McCreight explained that he had devoted significant time to voluntary activities for his church.

The hearing panel found that Mr. McCreight had 1) failed to act on an estate matter; 2) failed to communicate with his client; 3) failed to safeguard estate documents provided to him by his client; and 4) misrepresented facts to Bar Counsel and refused to respond to inquiries by the office of Bar Counsel. The Committee on Legal Ethics recommends a suspension of law license for two months. The Committee further recommends that Bar Counsel review Mr. McCreight's current practice habits during the suspension.

II.

As we explained in syllabus point 1 of Committee on Legal Ethics v. Pence, ___ W. Va. ___, 216 S.E.2d 236 (1975), the West Virginia State Bar has the burden of proving by full, preponderating and clear evidence that an ethical violation has been committed. The Committee on Legal Ethics has presented us with virtually unrefuted evidence that Mr. McCreight failed to complete, or perhaps even begin, the representation for which he was retained. His failure to act on estate matters and to communicate with his clients constitutes a violation of D.R. 6-101(A)(3) of The West Virginia Code of Professional Responsibility¹ which provided that a lawyer shall not neglect a legal matter entrusted to him. Mr. McCreight also violated D.R. 9-102(B)(3) and (4) by failing to safeguard the estate documents provided by Mr. Brown. Disciplinary Rule 9-102(B)(3) and (4) provided as follows:

D.R. 9-102 Preserving Identity of Funds and Property of a Client. -

(B) A lawyer shall:

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

¹The West Virginia Code of Professional Responsibility, replaced by the Rules of Professional Conduct, was in effect until January 1, 1989. Because many of the events in question transpired prior to that date, reference will be made to violations of the Code of Professional Responsibility rather than the Rules of Professional Conduct.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

Mr. McCreight also violated D.R. 1-102 by misrepresenting facts to Bar Counsel regarding an inability to locate his client and his desire to obtain additional information before filing the appropriate documents. Disciplinary Rule 1-102(A)(4) provided that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Rule 8.1(b) of the West Virginia Rules of Professional Conduct, effective January 1, 1989, obligated attorneys to respond to inquiries and to provide information to the office of Bar Counsel. Mr. McCreight's lack of cooperation during this investigation is therefore a separate ethics violation. To the extent that Mr. McCreight engaged in such conduct after January 1, 1989, he violated Rule 8.1(b) of the Rules of Professional Conduct, which provides:

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or 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 a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise

protected by Rule 1.6 [attorney-client privilege].

In Committee on Legal Ethics v. Matthews, 186 W. Va. 122, 411 S.E.2d 265 (1991), an attorney who had neglected an estate matter for almost ten years was issued a public reprimand and ordered to submit to a plan of supervision. Similarly, in Committee on Legal Ethics v. Mitchell, 187 W. Va. 287, 418 S.E.2d 733 (1992), this Court suspended the law license of an attorney for two months for neglecting a personal injury action for eight or nine years. In Committee on Legal Ethics v. Charonis, 184 W. Va. 268, 400 S.E.2d 276 (1990), an attorney's law license was suspended for two months for refusing to communicate with a client in an unemployment compensation case and thereafter failing to return the client's file. Furthermore, this Court ordered Mr. Charonis to submit to supervision of his law practice for one year following his reinstatement.

In the present case, we believe that the Committee on Legal Ethics has presented sufficient evidence of ethical violations to justify the discipline requested. Mr. McCreight has committed four ethical violations. Moreover, he has, through his lack of cooperation, frustrated the attempts of Bar Counsel to investigate the ethics complaint filed by Mr. Brown. See generally Committee on Legal Ethics v. Martin, 187 W. Va. 340, 419 S.E.2d 4 (1992). We adopt the recommendations of the Committee on Legal Ethics and determine that a two-month suspension is appropriate. During that

suspension, Bar Counsel will review Mr. McCreight's current practice habits in order that reinstatement can be expedited if requested and found to be warranted. Furthermore, Mr. McCreight is ordered to pay \$157.00 in costs associated with the investigation and litigation of this matter by the Committee on Legal Ethics. Additionally, all continuing legal education requirements must be met as a condition to Mr. McCreight's reinstatement.

It is so ordered.