

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 7th day of July, 1998, the following order was made and entered:

Lawyer Disciplinary Board, Respondent

vs.) No. 24970

Thomas L. Linkous, a suspended member of
The West Virginia State Bar, Petitioner

On a former day, to-wit, January 14, 1998, came the petitioner, Thomas L. Linkous, a suspended member of The West Virginia State Bar, by Clifford, Mann & Swisher, and Stephen P. Swisher, his attorneys, pursuant to Rule 3.32(a) of the Rules of Lawyer Disciplinary Procedure, and presented to the Court his Reinstatement Questionnaire. Thereafter, on the 12th day of June, 1998, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Cheryl L. Henderson, its chairperson, pursuant to Rule 3.32(c) of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition recommending that the license to practice law in the State of West Virginia of the petitioner, Thomas L. Linkous, be reinstated with the following conditions: (1) petitioner be required to continue to participate in a Twelve Step Program and maintain his sobriety; (2) petitioner be required to comply with Mandatory Continuing Legal Education requirements; (3) petitioner be required to reimburse the Lawyer Disciplinary Board for the costs and expenses incurred in the investigation of this case; and (4) petitioner voluntarily involve himself in a mentor program.

There having been heard neither objection nor concurrence from either the petitioner or the Office of Disciplinary Counsel, pursuant to Rule 3.32(c) of the Rules

BEFORE THE HEARING PANEL SUBCOMMITTEE
LAWYER DISCIPLINARY BOARD

LAWYER DISCIPLINARY BOARD,

Respondent,

vs.

I.D. No.: 98-02-001
Supreme Court No.: 23887

THOMAS L. LINKOUS, a suspended
member of the West Virginia State Bar

Petitioner.

RECOMMENDED ORDER OF HEARING PANEL SUBCOMMITTEE

On March 23, 1998, a hearing was held pursuant to Rule 3.32(c) of the Rules of Lawyer Disciplinary Procedure regarding the reinstatement of Petitioner Thomas L. Linkous' law license and pursuant to the October 16, 1985 Order of the Supreme Court of Appeals. Present were Subcommittee members Cheryl L. Henderson, Chairperson, Debra K. Sullivan, and Ann E. Snyder. Also present were Petitioner Thomas L. Linkous, his attorney, Stephen P. Swisher, and Chief Lawyer Disciplinary Counsel Sherri D. Goodman.

The Subcommittee first admitted into evidence a stipulation of fact submitted by the parties. These stipulations read:

1. On October 16, 1985, the Court suspended Petitioner's law license for thirty days due to lack of diligence. Petitioner had been retained by a client who had

purchased property in a tax sale. His failure to complete the process to obtain the deed within a two-month period as required by statute caused the client to lose her claim to the real estate. This event occurred in 1980. Committee on Legal Ethics v. Linkous, No. 16787 (W. Va. 10/16/85).

2. Petitioner, at the time of his thirty day suspension, was working as in-house counsel for Pocahontas Land Company, which is wholly owned by Norfolk Southern Railway. On January 1, 1986, Petitioner was appointed Senior Counsel for Pocahontas Land Company. According to Petitioner, he did not realize that he had to petition for reinstatement. Under the By-Laws in effect in 1985, a lawyer was required to petition for reinstatement, no matter how short the period of suspension, unless otherwise stated by the Court in its opinion.

3. The West Virginia State Bar, in 1987, mistakenly sent Petitioner a membership fee notice. He paid the \$175.00 fee. On November 20, 1987, Mark P. Smith, then Executive Director of the State Bar, sent a letter to Petitioner explaining that he was still under suspension and refunded the membership fee paid in error. Mr. Smith made clear that Petitioner could not use his former active member status to practice law while suspended.

4. Petitioner talked to Mr. Swisher about petitioning, but never went forward with filing. He wanted to avoid the embarrassment which would result if his employer knew he was still suspended. In addition, Petitioner was developing

alcoholism and did not display good judgment. In his words, he "simply put his head in the sand and hope[d] the matter would go away."

5. In 1996, it came to the attention of an employee at the corporate headquarters in Roanoke that Pocahontas Land Company was paying the Bar dues and CLE costs for two other lawyers in the Bluefield office, but not for Petitioner. Someone contacted the State Bar or the Office of Disciplinary Counsel and learned that Petitioner was still suspended. Pocahontas Land Company asked Petitioner to resign in October of 1996, but his employer still paid for in-patient treatment.

6. Disciplinary Counsel questioned two lawyers Petitioner worked with and asked his counsel additional questions on what type of work he had been doing for Pocahontas Land Company. Petitioner's counsel characterized Petitioner's work as mostly administrative. Petitioner reviewed coal leases. In Kentucky, coal leases must be signed by a lawyer, and Petitioner would sign them. He monitored litigation being handled by a Kentucky firm, but signed no pleadings and made no appearances. Petitioner recalled appearing in one or two cases, possibly in West Virginia, as a representative of the party and sat at counsel table. He did not participate as a lawyer in these cases. Since losing his job, Petitioner has not practiced law.

The Office of Disciplinary Counsel submitted into evidence Petitioner's Reinstatement Questionnaire, a letter from the State Bar to the Petitioner dated November 20, 1987 and a

) copy of the Order previously entered by the Supreme Court on October 16, 1985. The Subcommittee heard the testimony of the Petitioner and three character witnesses. Two of those witnesses, Howard Persinger and R. P. Duranti, are members of the West Virginia State Bar and are practicing attorneys who testified that in their dealings with the Petitioner, Petitioner's job was essentially an administrative one; that at all times from 1985 until October 1996 Petitioner's conduct had been professional and no one's interest had been prejudiced by his conduct or activity. In addition, both witnesses believed that the Petitioner would continue to conduct his business honestly and in a diligent manner. The third witness, Skip Ragan, was an employee of the Rehabilitation Program, who testified that the Petitioner's conduct in this manner was consistent with alcoholism; that Petitioner has successfully completed an intensive in-patient program and treatment for alcoholism in Williamsburg, Virginia; and that Petitioner continues to work actively with Alcoholics Anonymous and has been sober since his admission to the in-patient program at Williamsburg. The Subcommittee concluded that the Petitioner is the proper subject for reinstatement. The Subcommittee did have concerns as to the continued sobriety of Petitioner and, accordingly, it was recommended that the Petitioner's law license be reinstated, but conditioned upon the following items:

1. Petitioner continue to participate in a Twelve Step Program and maintain his sobriety.

2. That the Petitioner meet his CLE requirements of twelve hours, three of which must be in ethics.

3. That the Petitioner be responsible for the cost of these proceedings and shall pay the same.

4. Since it is unknown where Petitioner will become employed, the Subcommittee does not require a mentor program, but highly suggests to Petitioner that once settled, he do so voluntarily to maintain good standing in the legal community.

The above is the recommended decision of the Hearing Panel Subcommittee.

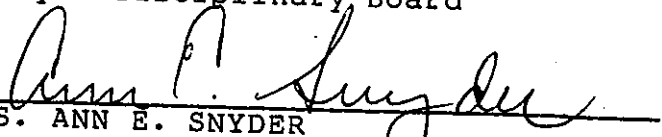
Dated this _____ day of _____, 1998.



CHERYL L. HENDERSON, Chairperson
Hearing Panel Subcommittee
Lawyer Disciplinary Board



MS. DEBRA K. SULLIVAN
Hearing Panel Subcommittee
Lawyer Disciplinary Board



MS. ANN E. SNYDER
Hearing Panel Subcommittee
Lawyer Disciplinary Board

(Ord.:8)