

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 2nd day of April, 1992, the following order was made and entered:

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

vs.) No. 20893

John C. Krivonyak, a member of The West Virginia State Bar, Respondent

On a former day, to-wit, March 31, 1992, came the complainant, the Committee on Legal Ethics of The West Virginia State Bar, by Maria Marino Potter, its attorney, and also came the respondent, John C. Krivonyak, by Daugherty, Tantlinger & Daugherty, and George A. Daugherty, his attorneys, and presented to the Court their joint motion in writing for leave to waive the filing of any further documents and oral argument scheduled for Tuesday, the 7th day of April, 1992, for the entry of an order issuing a public reprimand.

Upon consideration whereof, the Court is of opinion to and doth hereby grant said motion. Accordingly, it is therefore adjudged and ordered that the respondent, John C. Krivonyak be, and he hereby is, publicly reprimanded.

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

Attest:


Clerk, Supreme Court of Appeals

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

IN RE: JOHN C. KRIVONYAK, a member of
The West Virginia State Bar

I.D. No. 89-123

STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATION OF DISCIPLINE

The West Virginia State Bar, by Counsel Maria Marino Potter, and John C. Krivonyak, by Counsel, George A. Daugherty, hereby submit to the Hearing Panel Subcommittee of the Committee on Legal Ethics the stipulations set forth below in lieu of an evidentiary hearing. These stipulations are limited to the factors necessary for resolution of the issues before the Committee and are not intended to be comprehensive.

FINDINGS OF FACT

1. John C. Krivonyak ("Respondent" or "Respondent Krivonyak") is a licensed member of The West Virginia State Bar, practicing in Kanawha County, West Virginia, and as such, is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Committee on Legal Ethics of The West Virginia State Bar.

2. In October of 1987, James C. Hudnall ("Complainant" or "Complainant Hudnall") retained Respondent to represent him in filing a protest of a Worker's Compensation award which Complainant had obtained without the aid of an attorney.

3. Respondent, in order to undertake representation of the Complainant before the Worker's Compensation Fund, charged Complainant one thousand ninety-seven dollars and eighty cents (\$1,097.80) which Respondent characterized as ten percent (10%) of

the award which Complainant Hudnall had previously received. By check dated October 20, 1987, Complainant paid Respondent one thousand ninety-seven dollars and eighty cents (\$1,097.80).

4. In early 1989, Complainant became dissatisfied with Respondent's representation and terminated Respondent's employment.

5. Although Respondent Krivonyak's representation did not result in an award of Worker's Compensation benefits, Respondent refused to return any portion of Complainant's fee. On April 4, 1989, Mr. Hudnall filed an ethics complaint with The West Virginia State Bar regarding Respondent's fee.

6. West Virginia Code § 23-5-5 governs fees which an attorney may charge for representation of a claimant in a Worker's Compensation matter as follows:

On or after the first day of July, one thousand nine hundred seventy-five, no attorney's fee in excess of twenty percent of any award granted shall be charged or received by an attorney for a claimant or dependent. In no case shall the fee received by the attorney of such claimant or dependent be in excess of twenty percent of the benefits to be paid during a period of two hundred eight weeks . . .

7. West Virginia Code also provides that:

. . . any contract entered into in excess of twenty percent of the benefits to be paid during a period of two hundred eight weeks, as herein provided shall be unlawful and unenforceable as contrary to the public policy of this State and any fee charged or received by an attorney in violation thereof shall be deemed an unlawful practice and render the attorney subject to disciplinary action.

8. There are no provisions under West Virginia law which allow an attorney to accept a fee in a Worker's Compensation case before his efforts result in an award on behalf of the claimant.

In interpreting West Virginia Code § 23-5-5, the West Virginia Supreme Court of Appeals has clearly stated that an attorney's fee calculation in Worker's Compensation cases is "hinged upon an "award" of benefits being granted". Committee on Legal Ethics v. Coleman 377 S.E. 2d 485 (W.Va. 1988).

9. Respondent's initial position with regard to this complaint was that he had performed legal services and was, therefore, entitled to the fee. Complainant Hudnall thereafter instituted a suit in Magistrate Court to recover the fee paid to Respondent.

10. By letter dated August 20, 1990, Respondent advised Complainant Hudnall that he was refunding the sum of three hundred fifty-three dollars and fifty cents (\$353.50) of the fee paid to him. Complainant Hudnall did not cash the check Respondent sent as it stated that the refund was in "full satisfaction of claim".

11. Respondent has admitted that his belief that it was acceptable to request payment of a fee in a Worker's Compensation matter before obtaining an award of benefits was due to the fact that he was inexperienced in Worker's Compensation matters. Respondent has subsequently recognized that his initial position was contrary to West Virginia law.

12. Based upon his knowledge that the fee charged to Complainant Hudnall was improper, Respondent agrees that a return of Complainant Hudnall's fee plus the costs incurred by Mr. Hudnall to recover the fee in Magistrate Court is appropriate. Respondent will on or before October 15, 1991 refund to Complainant Hudnall

the sum of one thousand one hundred eighty dollars and eighty cents (\$1,180.80).

13. On September 9, 1991, Bar Counsel met with Complainant Hudnall and his wife to discuss the fact that Respondent's Counsel had proposed the idea of entering into stipulations in lieu of holding an evidentiary hearing on the complaint. Bar Counsel proceeded to explain in detail the proposal of Respondent's Counsel to the Hudnalls.

14. Complainant Hudnall and his wife felt an evidentiary hearing would not be necessary if, as Respondent's Counsel proposed, Respondent admitted that the fee charged was improper, refunded the fee plus the costs incurred in attempting to recover the fee and for Respondent to agree to accept a public reprimand. Further, Complainant Hudnall believed this proposal a satisfactory resolution of his Complainant.

CONCLUSIONS OF LAW

By charging a fee in a Worker's Compensation matter before his legal representation obtained an award which is prohibited under West Virginia Code § 23-5-5, Respondent violated DR 2-106(A) of the Code of Professional Responsibility which states:

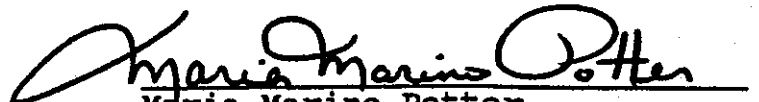
A lawyer shall not enter into an agreement for charge or collect an illegal or clearly excessive fee.

RECOMMENDED DISCIPLINE

The parties do hereby respectfully recommend to the Hearing Panel Subcommittee that Respondent receive a public reprimand from the Supreme Court of Appeals of West Virginia.



George A. Daugherty
Counsel for Respondent John C.
Krivonyak



Maria Marino Potter
Counsel for The West Virginia
State Bar