

Per Curiam:

FILED

JUL 10 1992

Investigative Panel of the Panel of
The Committee on Legal Ethics of The
West Virginia State Bar, Petitioner,

No. 20970 v.

Sherman Lambert, A Member of
The West Virginia State Bar, Respondent

Ann H. Ramsey
CLERK OF THE
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

The Investigative Panel of the Committee on Legal Ethics of the West Virginia State Bar (hereinafter "Investigative Panel") has petitioned this Court, pursuant to Article VI, Section 26(b) of the By-Laws of the West Virginia State Bar, to order a medical and psychological examination of respondent attorney Sherman Lambert to determine whether he is incapacitated by drugs or intoxicants from continuing the practice of law. We find that the Investigative Panel has presented sufficient evidence demonstrating the necessity of such evaluation, and we therefore order that Sherman Lambert undergo an evaluation to ascertain his capacity to continue in the practice of law.

I.

On April 12, 1988, in response to episodes of erratic behavior on the part of the respondent, this Court ordered the respondent to submit to a physical examination. He refused to appear for the scheduled examination and was consequently suspended indefinitely from the practice of law on May 18, 1988. The respondent was

subsequently examined by Dr. Bradley Soule. He admitted to alcohol use, but denied a cocaine addiction suspected by Dr. Soule. The respondent then participated in an in-patient treatment program for alcoholism and was thereafter reinstated by this Court on December 5, 1990.

The Investigative Panel now petitions this Court for an order of examination based upon the respondent's more recent behavior which, the Investigative Panel contends, may be attributable to alcohol or drug usage. The Investigative Panel has provided us with five specific examples of the respondent's erratic behavior, briefly summarized as follows: (1) After a February 22, 1991, final order was entered in the Circuit Court of Berkeley County in Kelly v. Swartwood, Civil Action Number 89-C-845, the respondent allegedly personally assured bar counsel that he would pursue an appeal to this Court on behalf of his client, Gladstone Kelly. The respondent failed to pursue the appeal within the appropriate time period, and, on January 23, 1992, this Court denied Mr. Kelly's motion, filed by other counsel, to extend the time within which to petition for appeal; (2) On April 26, 1991, the respondent was arrested for possession of crack cocaine in Frederick, Maryland. The charge became nolle prosequi on September 4, 1991, due to the failure of the arresting officer to appear;¹ (3) On September 13,

¹The deposition of Officer Milton Frech of the Frederick, Maryland, city police department was taken on March 30, 1992, for the purpose of discovering additional information regarding the respondent's arrest for possession of crack cocaine. Officer Frech (continued...)

1991, the respondent failed to appear for a juvenile proceeding before Magistrate Gail Boober in Jefferson County. Magistrate Boober filed a criminal complaint for contempt; (4) On January 8, 1992, the respondent failed to appear for a criminal misdemeanor trial before Magistrate Patricia Noland of Jefferson County in State v. Leonard Wooten. That matter was rescheduled for January 10, 1992; (5) On January 29, 1992, the respondent failed to appear for a jury trial before United States District Court Judge

¹(...continued)

testified that he was assigned as a member of an arrest team on the evening of April 24, 1991. He was a member of a group called Operation Zero Tolerance which was designed to target drug areas for special surveillance. After receiving information that another officer, Officer Matthew Trageser, had seen an individual purchasing cocaine and exiting the housing project under surveillance, Officer Frech began walking in the vicinity of that project. Officer Frech observed an individual fitting the description provided by the other officer. Officer Frech then approached the suspect from behind. The suspect, Mr. Lambert, looked over his shoulder and saw Officer Frech approaching. Officer Frech then grabbed Mr. Lambert, Mr. Lambert pulled his hand out of his right pocket, and a rock of crack cocaine rolled out onto the street.

The deposition of Officer Matthew Trageser of the Frederick, Maryland, police department was also taken on March 30, 1992. Officer Trageser served in the Community Service section and was involved in a tactical unit designed to identify participants in the sale and distribution of controlled substances. On the night of Mr. Lambert's arrest, Officer Trageser was in the area of the John Hanson apartment complex housing project. That area had been targeted due to a high volume of drug sales and activity. Officer Trageser's assignment was to identify participants involved in suspected drug transactions and provide their descriptions to members of the unit on call as an arrest team. Officer Trageser observed Mr. Lambert entering a courtyard at the housing project and engaging in conversation with a woman. After a brief conversation, the woman gave Mr. Lambert what Officer Trageser believed to be one rock of crack cocaine. Mr. Lambert then paid the woman. As Mr. Lambert returned, Officer Trageser was able to see his face and provide a good description to the arrest team which included Officer Frech.

Frederick P. Stamp in United States v. Robert Ainsworth in the Northern District of West Virginia. Although the respondent had received notification by telephone and mail of the trial date, he failed to call or otherwise explain his absence. Judge Stamp issued a rule to show cause for criminal contempt.

The Investigative Panel also submitted information indicating that the respondent had settled two cases in 1987 in which he retained the clients' shares of settlements in the amounts of \$5,633.61 and \$3,914.32. The Clients Security Fund paid a total of \$8,014.32 to those clients, and the respondent made restitution of \$633.61 to one client who had received the maximum payment of \$5,000.00 from the Fund.²

II.

Based upon the facts set forth above, the Investigative Panel has requested this Court to order a medical and psychological evaluation of the respondent to determine if he is incapacitated from continuing the practice of law. Article VI, §26(b) of the By-Laws of the West Virginia State Bar provides as follows:

Whenever the Investigative Panel or Hearing Panel shall petition the court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or

²The respondent's conduct with regard to his alleged conversion of client funds is the subject of an ongoing disciplinary action scheduled for hearing on May 23, 1992.

intoxicants, the court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the court shall designate. If, upon due consideration of the matter, the court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order suspending him on the ground of such disability for an indefinite period and until the further order of the court and any pending disciplinary proceeding against the attorney shall be held in abeyance.

Following the recommendation of the Investigative Panel, we find sufficient evidence of inappropriate behavior and possible incapacity to justify an evaluation to determine whether Mr. Lambert is incapacitated. It is therefore Adjudged, Ordered, and Decreed that the respondent submit to a medical and psychological evaluation to be performed at the Eastern Panhandle Mental Health Center in Martinsburg, West Virginia, under the supervision of Dr. Edward Pinney designed to determine whether the respondent is incapacitated from continuing the practice of law.³ Furthermore, due to the serious nature of the allegations against Mr. Lambert, we temporarily suspend his license to practice law pending the outcome of the expert evaluation. Indefinite suspension is not made at this juncture, and any pending disciplinary proceedings against Mr. Lambert shall not be held in abeyance. Mr. Lambert

³Due to the fact that cocaine use can apparently not be detected after approximately 48 hours, the Investigative Panel also requested that we permit it to arrange for testing to be scheduled on a 24 hour notice to Mr. Lambert. We recognize that issue as a valid concern and hereby incorporate the 24 hour notice condition as part of this order.

shall bear the obligation of contacting the Eastern Panhandle Mental Health Center and Dr. Edward Pinney to schedule the required evaluation. Mr. Lambert shall also have the responsibility to obtain this evaluation at his own expense. Upon completion of the evaluation, a report shall be submitted to this Court in preparation for a determination regarding the feasibility of Mr. Lambert's continued practice of law.

It is so Ordered.