

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 December, 1992, the following order was made and entered:

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

vs.) No. 21422

**Dale Forrest Sheppard, an active but not
practicing member of The West Virginia
State Bar, Respondent**

On a former day, to-wit, December 1, 1992, came the respondent, Dale Forrest Sheppard, an active but not practicing member of The West Virginia State Bar, pro se, and presented to the Court his motion in writing for leave to waive the filing of a brief and oral argument scheduled for Tuesday, the 1st day of December, 1992, and for the entry of an order imposing a five-year period of suspension from the practice of law in the State of West Virginia, for the reasons stated therein.

Upon consideration whereof, the Court is of opinion to and doth hereby grant said motion and doth hereby order that the respondent's license to practice law in the State of West Virginia be, and it hereby is, suspended for a period of five years, effective on the 1st day of January, 1993. It is further considered and ordered that respondent is hereby granted leave to petition for reinstatement at the end of that period.

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

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

COMMITTEE ON LEGAL ETHICS OF
THE WEST VIRGINIA STATE BAR,

Petitioner,

v.

DALE FORREST SHEPPARD, an active
but not practicing member of
The West Virginia State Bar,

Respondent.

No.

D. C. Clerk's Office
FILED

SEP 28 1992

Amelia J. Ramsey

CLERK OF THE
SUPREME COURT OF APPEALS

P E T I T I O N

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA:

Pursuant to §§ 23 and 25, Article VI of the By-Laws of The West Virginia State Bar ("By-Laws"), the Committee on Legal Ethics of The West Virginia State Bar (the "Committee") files the attached Order of conviction of Dale Forrest Sheppard ("Respondent") and requests that the Court issue an Order to show cause why Respondent's license to practice law should not be annulled. In support of said Petition, the Committee states the following:

1. Respondent is an active but not practicing member of The West Virginia State Bar which is an administrative agency of the Court organized and operated under a duly adopted Constitution and By-Laws.

2. On September 21, 1992, Respondent pleaded guilty to filing a false federal income tax return, in violation of 26 U.S.C. § 7206(1), in the United States District Court For The Southern District of West Virginia in United States of America v. Dale Forrest Sheppard, Criminal No. 2:92-00184. A copy of the ORDER of

Conviction entered on September 23, 1992 is attached as Exhibit "A".

3. On September 18, 1991, Respondent entered into a PLEA AGREEMENT with the United States Attorney's Office in which he waived prosecution by indictment and agreed that the proceedings in this matter would be by information rather than by indictment. A copy of said PLEA AGREEMENT is attached as Exhibit "B".

4. The INFORMATION to which Respondent pleaded guilty charged that he did, on or about April 15, 1988, willfully make and subscribe an U.S. Individual Income Tax Return (Form 1040) for calendar year 1987 which he knew was false as to a material matter because said U.S. Individual Income Tax Return did not disclose all sources of Respondent's income. At the time Respondent filed the tax return in question, he knew that he had additional income he did not report in the form of diversion of corporate funds. Although not specifically stated in the INFORMATION, it is the understanding of Bar Counsel that Respondent failed to report more than eighty thousand dollars (\$80,000) in income for calendar year 1987. A copy of the INFORMATION is attached to the PLEA AGREEMENT under Exhibit "B".

5. Respondent was convicted of crimes involving moral turpitude and professional unfitness within the meaning of § 23, Article VI, of the By-Laws and crimes that reflect adversely on the lawyer's honesty, trustworthiness and fitness as a lawyer in other respect within the meaning of Rule 8.4(b) of the Rules of

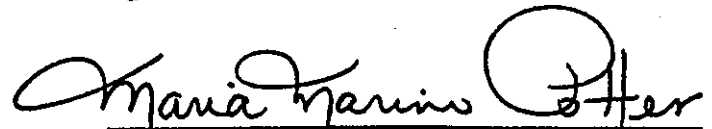
Professional Conduct. Therefore, his license to practice law should be annulled.

6. Should Respondent request, and this Court grant Respondent a mitigation hearing, the Committee respectfully requests that Respondent's license to practice law be suspended immediately.

WHEREFORE, the Committee respectfully prays that this Court issue an Order to show cause why Respondent's license should not be annulled and, after affording Respondent the opportunity to respond to said Order, disbar Respondent from the practice of law.

COMMITTEE ON LEGAL ETHICS OF
THE WEST VIRGINIA STATE BAR

By Counsel



Maria Marino Potter, Bar Counsel
THE WEST VIRGINIA STATE BAR
2006 Kanawha Boulevard, East
Charleston, West Virginia 25311
(304) 558-2456

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

ENTERED

SEP 23 1992

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CRIMINAL NO. 2:92-00184

DALE F. SHEPPARD,

Defendant.

ORDER BOOK
PAGE

ORDER

At a hearing held September 21, 1992, the United States appeared by Mary S. Feinberg, Assistant United States Attorney, and the Defendant appeared in person and by counsel, Robert B. Allen, for the purpose of considering the Defendant's plea to a single-count information.

The Court inquired of the Defendant, addressing him personally and by counsel, to determine the competency of the Defendant to proceed, and the Court then found the Defendant competent.

The Court further inquired of the Defendant's understanding of his right to require the Government to proceed against him by way of indictment as to the criminal violations set forth in the information. After having thoroughly explained this right to the Defendant, and after having heard the Defendant's responses to the Court's questions to him concerning this right, the Court found that the Defendant had made a knowing and intelligent waiver of the same.

The Assistant United States Attorney then offered for the

Court's consideration and summarized the entirety of a written plea agreement which was signed by both the Defendant and his counsel, which signature the Defendant and his counsel acknowledged in Court. After considering the entire agreement, the Court found it to be fair to the interests of both the Defendant and the United States and ordered the plea agreement filed with the Clerk.

The Court advised the United States and the Defendant that the plea agreement would not be accepted or rejected by the Court until a presentence report with all differences resolved is available for the Court's consideration. The acceptance of the plea agreement and the proposed plea is, therefore, expressly conditioned upon the availability of factual findings in the presentence report which will permit the Court to conclude that the charge to which the Defendant will enter his plea adequately reflects the seriousness of his offense behavior and does not undermine the statutory purposes of sentencing.

The Court next inquired as to the Defendant's plea and the Defendant responded that he intended to plead guilty. The Court explained the statute under which this action is prosecuted and the elements which the Government would have had to prove had the matter been tried. The Court further informed the Defendant, per the requirements of Rule 11, of the constitutional rights he waived by pleading guilty to the information and allowing the above mentioned information to be filed against him. The Court then determined that the Defendant understood those rights. The Court advised the Defendant that he could not withdraw his plea if he was dissatisfied with the sentence rendered.

The Court inquired of the Defendant personally as to whether any threats or promises had been made to him to induce him to plead, whether any predictions were made regarding the sentence he may receive, and whether he had any second thoughts about entering a plea of guilty, to which questions the Defendant replied in the negative. The Court inquired personally of the Defendant about acts he did and with what intentions his actions were undertaken.

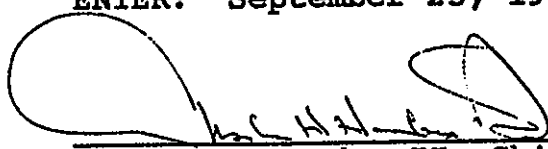
The Court then being satisfied that there existed a legal and factual basis for the plea, accepted the Defendant's plea of guilty and the Defendant executed a written plea of guilty which his counsel witnessed.

Accordingly, the Court adjudges and the Defendant now stands guilty of the offense charged in the within single-count information.

The Court then scheduled the disposition of this matter for Monday, December 7, 1992, at 10:30 a.m. in Charleston. The Court found by clear and convincing evidence that the Defendant was not a flight risk or a danger to the community and, hence, ordered that the Defendant remain free pending disposition on the conditions of his earlier executed bond.

The Clerk is directed to send a copy of this Order to counsel of record, the United States Marshal for the Southern District of West Virginia and the Probation Office of this Court.

ENTER: September 23, 1992


Charles H. Haden II, Chief Judge

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A TRUE COPY, Certified this

24 day of Sept, 19 92

RONALD D. LAWSON, CLERK

BY 
DEPUTY



United States Attorney
Southern District of West Virginia

September 18, 1991

United States Courthouse
500 Quarrier Street
Charleston, West Virginia 25301
FAX: (304) 347-5104
FAX: FTS 930-5104

Mailing Address:
Post Office Box 3234
Charleston, West Virginia 25332
(304) 345-2200
FTS 930-5145
1-800-659-8726

FILED

SEP 21 1992

IN CLERK'S OFFICE U.S. DIST.
COURT, SO. DIST. OF WVA.
RONALD D. [unclear]

2: 92-CV-184-01

Robert B. Allen, Esquire
KING, BETTS and ALLEN
1302 Charleston National Plaza
Post Office Box 3394
Charleston, West Virginia 25333

Re: DALE FORREST SHEPPARD

Dear Mr. Allen:

This will confirm our conversations with regard to your client, Dale Forrest Sheppard (hereinafter "Mr. Sheppard"). As a result of these conversations, it is agreed by and between the United States and Mr. Sheppard as follows:

1. Mr. Sheppard will waive his right pursuant to Rule 7 of the Federal Rules of Criminal Procedure to be charged by indictment and will consent to the filing of a one-count information to be filed in the United States District Court for the Southern District of West Virginia, a copy of which is attached hereto as "Plea Agreement Exhibit A."

2. Mr. Sheppard will plead guilty to a violation of Title 26, United States Code, Section 7206(1) (filing a false tax return) as charged in said information.


DALE FORREST SHEPPARD
Defendant


Date Signed


ROBERT B. ALLEN
Counsel for Defendant

9-18-91
Date Signed

Max
9-18-91

Robert B. Allen, Esquire
September 18, 1991
Page 2

Re: DALE FORREST SHEPPARD

3. The maximum penalty to which Mr. Sheppard will be exposed by virtue of his guilty plea is imprisonment for a period of three (3) years, a fine of \$250,000, and costs of prosecution. Mr. Sheppard will be subject to a term of not more than one (1) year supervised release. Mr. Sheppard will also be subject to payment of a criminal assessment pursuant to Title 18, United States Code, Section 3013. The \$50 criminal assessment will be paid in full to the Clerk at the time Mr. Sheppard is sentenced.

4. Mr. Sheppard will be completely forthright and truthful with this office and federal, state and local law enforcement agents with regard to all inquiries made of him. In addition, Mr. Sheppard will give signed, sworn statements, grand jury testimony and trial testimony relative thereto, if the same are deemed necessary. During any interviews conducted pursuant to this agreement, except appearances before the grand jury, Mr. Sheppard may have counsel present if he desires.

5. Nothing contained in any statement or testimony given by Mr. Sheppard pursuant to this agreement or any evidence developed therefrom will be used against him directly or indirectly in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines unless this agreement becomes void due to violation of any of its terms by Mr. Sheppard. However, nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from that information and testimony being provided by the defendant pursuant to this agreement, in determining the applicable guideline range, nor does this agreement prevent Mr. Sheppard from being prosecuted for any violations of federal and state laws he may have committed should evidence of any such



DALE FORREST SHEPPARD
Defendant

Sept. 18, 1991
Date Signed



ROBERT B. ALLEN
Counsel for Defendant

9-18-91
Date Signed

Max
9-18-91

Robert B. Allen, Esquire
September 18, 1991
Page 3

Re: DALE FORREST SHEPPARD

violations be obtained from any such independent, legitimate source. In addition, this agreement does not prevent the United States from prosecuting Mr. Sheppard for perjury or the giving of a false statement to federal agents, if such a situation should occur by virtue of his failing to be fully forthright and truthful as required by paragraph 4.

6. At final disposition, the United States will advise the Court of the nature and extent of Mr. Sheppard's forthrightness and truthfulness, or failure to be forthright and truthful, and ask the Court to give same such weight as the Court deems appropriate. The United States will also advise the Probation Department and the Court of the nature and extent of Mr. Sheppard's recognition and affirmative acceptance of personal responsibility or his failure to do so. The United States and Mr. Sheppard understand and agree that the Court has the sole discretion to determine whether the defendant has adequately accepted responsibility.

7. There have been no promises or representations whatsoever made to Mr. Sheppard by the United States or any of its agents as to what the final disposition in this matter will be. It is understood that the matter of sentencing is within the sole discretion of the Court and the United States will make no recommendation as to a specific sentence. However, the United States retains the right to inform the probation office and the Court of any relevant facts, to address the Court with respect to the nature and seriousness of the offense, to respond to any questions raised by the Court, to correct any inaccuracies or inadequacies in the presentence report and to respond to any statements made to the Court by or on behalf of Mr. Sheppard.



DALE FORREST SHEPPARD
Defendant

Sept. 18, 1991
Date Signed



ROBERT B. ALLEN
Counsel for Defendant

9-18-91
Date Signed

*not
9-18-*

8. Mr. Sheppard will work with representatives of the Internal Revenue Service for the purpose of: (a) determining (by taxable period) the total net income and taxable income derived by Mr. Sheppard as a result of his activity which resulted in this plea agreement for the calendar years 1987 and 1988; (b) filing correct federal income tax returns for the calendar years 1987 and 1988; (c) amending existing returns on file for the calendar years 1987 and 1988; and (d) paying all taxes determined to be due and owing to the fullest extent possible. Mr. Sheppard agrees that he will file correct federal income tax returns, if due or amend existing returns on file within three (3) months of the Court's acceptance of this agreement. Mr. Sheppard will release to civil representatives of the Internal Revenue Service all tax-related information obtained by the United States Attorney's Office during the course of this investigation for the purpose of complying with the provisions of this paragraph.

9. If either the United States or Mr. Sheppard violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept the terms of this agreement, it shall be void.

10. The conviction and final disposition of Mr. Sheppard, pursuant to his plea of guilty to the information, a copy of which is attached hereto as "Plea Agreement Exhibit A," and Mr. Sheppard fulfilling each of his responsibilities as set forth in the above nine (9) paragraphs of this agreement will conclude the prosecution by the United States in the Southern District of West Virginia of Mr. Sheppard, his wife, Nila J. Sheppard, H. E. Curry, Incorporated, Sheppard's Auto Supply, Incorporated and Petromotion, Ltd. for federal tax offenses for calendar years 1987 and 1988 only, and for federal offenses relating to false billing and transfers of money and property to employees of customers during the years 1986 to the date of this agreement.


DALE FORREST SHEPPARD
Defendant

Sept. 18, 1991
Date Signed


ROBERT B. ALLEN
Counsel for Defendant

9-18-91
Date Signed

MAJ
9-18-91

Robert B. Allen, Esquire
September 18, 1991
Page 5

Re: DALE FORREST SHEPPARD

11. This written agreement constitutes the entire agreement between Mr. Sheppard and the United States in this matter. There are no agreements, understandings, or recommendations as to any other pending or future charges against Mr. Sheppard in any court other than the United States District Court for the Southern District of West Virginia.

Very truly yours,

CHARLES T. MILLER
Acting United States Attorney

Mary S. Feinberg
MARY S. FEINBERG
Assistant United States Attorney

for Mary S. Feinberg
NANCY C. HILL
Chief, Criminal Division

MSF/bgs

As evidenced by my signature at the bottom of the five pages of this letter agreement, I have read and understand the provisions of each paragraph herein and, hereby, fully approve of each provision.

Dale Forrest Sheppard
DALE FORREST SHEPPARD
Defendant

Sept 18, 1991
Date Signed

Robert B. Allen
ROBERT B. ALLEN
Counsel for Defendant

9-18-91
Date Signed

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

Criminal No. _____

v.

26 U.S.C. § 7206(1)

DALE FORREST SHEPPARD

I N F O R M A T I O N

The United States Attorney Charges:

On or about April 15, 1988, in the Southern District of West Virginia, defendant DALE FORREST SHEPPARD, a resident of Charleston, Kanawha County, West Virginia, did willfully make and subscribe an U.S. Individual Income Tax Return, Form 1040, for calendar year 1987, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said U.S. Individual Income Tax Return, Form 1040 he did not believe to be true and correct as to every material matter in that the said U.S. Individual Income Tax Return did not disclose all sources of income, whereas as defendant DALE FORREST SHEPPARD then and there well knew and believed, he had and received income in addition to

that which was reported on the Return, in the form of diversions of corporate funds; all in violation of Title 26, United States Code, Section 7206(1).

UNITED STATES OF AMERICA

MICHAEL W. CAREY
United States Attorney

By:


MARY S. FEINBERG
Assistant United States Attorney

Date Filed: _____

"PLEA AGREEMENT EXHIBIT A"

CERTIFICATE OF SERVICE

This is to certify that I, Maria Marino Potter, Bar Counsel for The West Virginia State Bar, have this day, the 28th day of September, 1992, served a true copy of the foregoing "PETITION", by mailing the same in the United States Mail, in an envelope with sufficient postage to Robert B. Allen, counsel for Respondent Dale F. Sheppard, at his address of P.O. Box 3394, Charleston, West Virginia 25333.


Maria Marino Potter
Maria Marino Potter, Bar Counsel
Committee on Legal Ethics
The West Virginia State Bar