



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, 1999, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 26363

Phillip Jeffery North, an inactive member of The West Virginia State Bar, Respondent

On a former day, to-wit, June 22, 1999, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Timothy L. Sweeney, its chairperson, pursuant to Rule 3.20(e) of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition recommending that no discipline be imposed against the respondent, Phillip Jeffery North, an inactive member of The West Virginia State Bar.

Upon consideration whereof, the Court is of opinion to and doth hereby adopt the recommendation of the Hearing Panel Subcommittee of the Lawyer Disciplinary Board. It is therefore ordered that no discipline be imposed upon the respondent, Phillip Jeffery North, an inactive member of The West Virginia State Bar. Chief Justice Starcher deemed himself disqualified and did not participate in the consideration or decision of this case.

A True Copy

Attest:

A handwritten signature in black ink, appearing to read "Robert T. Miller".

Clerk, Supreme Court of Appeals

BEFORE THE LAWYER DISCIPLINARY BOARD  
STATE OF WEST VIRGINIA

In RE: **PHILLIP JEFFERY NORTH**, an inactive member  
of The West Virginia State Bar

I.D. No. 98-03-355  
Sup. Ct. No. \_\_\_\_\_

ORDER

Pursuant to a telephone conference held on the 8<sup>th</sup> day of June, 1999, at 3:30 p.m. o'clock the hearing panel subcommittee in the above-styled matter, to-wit: Timothy L. Sweeney, William B. Richardson, Jr., and Glenn A. Walker, upon consideration of the matter and all facts and issues appurtenant thereto, hereby adopts the recommendation of Lawyer Disciplinary Counsel, Steven Johnston Knopp, as more specifically set forth in his correspondence of the 6<sup>th</sup> day of May, 1999, a copy of which is attached hereto and incorporated herein by this reference for all purposes.

Enter this 14<sup>th</sup> day of June, 1999.

  
\_\_\_\_\_  
Timothy L. Sweeney, Chairman



upon Respondent for the violation following its review of proceedings before the Grievance Committee of the Colorado Supreme Court.

Based upon the above Order, ODC files its report and recommendations of discipline pursuant to RLDP, Rule 3.20, and refers the matter for appropriate action.

Respondent did not inform ODC of the discipline imposed by the Colorado Supreme Court Pursuant to Rule 3.20(a) of the Rules of the Lawyer Disciplinary Procedure until his letter of October 6, 1998, after Respondent was called by Chief Lawyer Disciplinary Counsel, Sherri D. Goodman. Goodman learned of the discipline in an article entitled "Lawyer is Censured for 'Recklessness' in Answering Question on Bar Application" contained in the *ABA/BNA Lawyers' Manual on Professional Conduct*, September 30, 1998, pp. 456, 457. (Exhibit 3)

However, Respondent, in response to an inquiry about the delay in notice, advised Disciplinary Counsel that at the time the Order issued, in late August or early September 1998, he had been dealing with family emergencies, including the arrangements following his father's unexpected death and his wife's serious illness and hospitalization, and had neither a clear recollection of when he had received notice of the Colorado Court's action, nor was he, because of these intervening events, able to comply with the ten-day period provided for in the rule. (Exhibit 4). Respondent expressed that he was sorry for the delay. Disciplinary Counsel submits that Respondent's explanation of the delay is reasonable, and is an appropriate basis to forgive or excuse the delay in providing the required notice.

## II. Statement of Facts.

Respondent, Phillip Jeffrey North, is a lawyer practicing in Hilton Head Island, South Carolina, who is presently in inactive status with The West Virginia State Bar, and, as such, is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board. Respondent was admitted to The West Virginia State Bar on May 16, 1978, the State Bar of California on November 29, 1978, the Virginia State Bar on October 9, 1986, and the Colorado State Bar on May 4, 1992. He has no record of prior disciplinary complaints in West Virginia.

The Order of Public Censure arises from Respondent's application for admission to the State Bar of Colorado. The facts set forth below are taken from the original Order of the Colorado Supreme Court, and derive in part from the findings of that Court's Grievance Committee ("Committee"). (Exhibit 5).

1. Respondent filed his application for admission to the State Bar of Colorado pursuant to Colorado rules.

2. Question numbered 35 of the application asked as follows:

Regardless of whether the record has been expunged, cancelled or annulled have you ever been investigated, arrested, charged, convicted, imprisoned, placed on probation or parole or forfeited collateral for any offense against the law? (If yes, describe all relevant circumstances including, but not limited to the date, location, court, facts and disposition, if any, concerning the matter. In answering this question you may omit traffic offenses for which you paid a \$50 fine or less.)

3. Because he did not carefully review the question, Respondent believed that the

question only referred to criminal convictions. His secretary was instructed to check the box marked "No" to question numbered 35. No further details were provided by him in response to the question.

4. Respondent signed the application subject to an oath that the statements therein were true and correct, and that he would be subject to denial or revocation of license if any statements were false or untrue.

5. In his previous application to the West Virginia Board of Bar Examiners on November 10, 1977, Respondent responded to question numbered 13, which asked as follows:

13. The following is a complete record of all criminal proceedings (including traffic violations other than occasional parking violations) to which I am or have been a party:

Respondent's answer was as follows:

Date: 1/31/71  
Court: Charleston Police Court  
Nature of Proceedings: Criminal  
Plaintiffs: State  
Disposition: dropped/expunged

Underneath the handwritten responses, Respondent wrote the following comment: "[C]harge: possession of marijuana[.] Note: substance was not marijuana; charges dropped[.]".

6. The Colorado Committee took testimony from Respondent at hearing, and concluded that there was clear and convincing evidence that Respondent was at least

investigated for an offense against the law in South Carolina,<sup>1</sup> even if he was not formally charged.

7. The Colorado Committee also took notice of an investigation of an incident conducted in London, England, in 1984, in which Respondent was detained by police. Allegations were made against him as to conduct causing bodily harm to a teen-aged son of one of his friends. Respondent was detained for questioning and later appeared before a tribunal, with his counsel. At the conclusion of the proceedings, the charges were dropped. Respondent's false response, according to the Committee, was material to the process of evaluating his application.

8. The Committee further found that the Response to question numbered 35 was not intentional. The Committee went on to say "he completely disregarded his responsibility to review carefully the application and verify that the responses were accurate. This casual attitude toward an application for admission to the bar rises to the level of reckless behavior." The Committee's Findings and Recommendations included a recommendation of a public censure. (Exhibit 6).

9. Based in part upon the findings of the Committee, the Supreme Court of Colorado imposed a disciplinary penalty of Public Censure against Respondent, and assessed the costs of the proceedings against him.

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<sup>1</sup> The Colorado authorities were apparently unable to distinguish Charleston, West Virginia from its South Carolina counterpart.

10. Respondent pursued no Appeal of the Colorado Order.

### III. Conclusions of Law.

Respondent violated RLDP, Rule 3.20, by not reporting the discipline imposed upon him to ODC within ten days. However, Respondent's failure to report does not constitute an aggravating factor pursuant to Rule 3.20(b) under the circumstances peculiar to this case.

RLDP Rule 3.20(e) provides that the Hearing Panel Subcommittee shall recommend that the same discipline be imposed as was imposed by the foreign jurisdiction unless it is determined by the Hearing Panel Subcommittee that:

- (1) the procedure followed in the foreign jurisdiction did not comport with the requirements of due process of law;
- (2) the proof upon which the foreign jurisdiction based its determination of misconduct is so infirm that the Supreme Court of Appeals cannot, consistent with its duty, accept as final the determination of the foreign jurisdiction;
- (3) the imposition by the Supreme Court of Appeals of the same discipline imposed in the foreign jurisdiction would result in grave injustice;
- or
- (4) the misconduct proved warrants that a substantially different type of discipline be imposed by the Supreme Court of Appeals.

The disciplinary procedure followed in the Colorado Supreme Court comports with the requirements of the due process of law, as previously found by the Supreme Court of Appeals of West Virginia. *Committee on Legal Ethics v. Battistelli*, 185 W. Va. 109, 405 S.E.2d 242 (1991) and *Lawyer Disciplinary Board v. Kohout*, No. 22629 (W. Va. 4/14/95).



The Order, which was not the subject of appeal, provides sufficient proof. However, imposition of the same discipline imposed by the Supreme Court of Colorado would result in a grave injustice, or in the alternative, requires a substantially different penalty, since the review of the matter under West Virginia Rules of Professional Conduct ("RPC") Rule 8.1, the West Virginia analogue to Colorado's Rules provision of DR-1-101(A), which provides as follows:

**Rule 8.1. Bar admission and disciplinary matters.**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application... shall not:

- (a) knowingly make a false statement of material fact; ....

should necessarily lead to a different result.

The West Virginia Rule provision has a standard of knowledge, rather than the standard of unintentional, reckless, careless conduct applied by the Colorado court in evaluating Respondent's completion and submission of his application to the Colorado authorities. In his applications to all other jurisdictions, including West Virginia, his first state of application for admission, Respondent had made a full and complete disclosure of the particular facts omitted in the Colorado application. Absent a clear showing that his omission was knowing or deliberate, as opposed to careless, Respondent's proven conduct in filing his Colorado application is not enough to constitute a violation of RPC, Rule 8.1 in this jurisdiction. Disciplinary Counsel is not persuaded that the imposition of a disciplinary penalty in West Virginia for an act which would not constitute a violation in West Virginia under the applicable standard is appropriate or justified.

**IV. Recommended Discipline.**

Accordingly, ODC recommends that there be no discipline imposed in this jurisdiction based upon the discipline imposed in our sister state under a substantially different standard. ODC further points to Respondent's prior record of no disciplinary complaints in West Virginia, and to Respondent's present status as an inactive member of the bar of this State as a basis for this recommendation.

In the alternative, should our recommendation be disregarded by the Hearing Panel Subcommittee, ODC submits that a degree of discipline no greater than a Public Reprimand, the available equivalent of the Colorado penalty, Public Censure, is warranted by the facts.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL  
By Counsel



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