

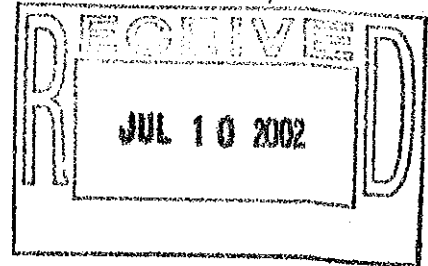
STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 2nd of July, 2002, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 30188

John P. Stimmel, a member of The West Virginia State Bar, Respondent



On a former day, to-wit, June 12, 2002, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Todd A. Twyman, its chairperson, pursuant to Rule 3.10 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition recommending that the respondent, John P. Stimmel, a member of The West Virginia State Bar, (1) be admonished; (2) undergo a supervised practice for one year, with a supervising attorney approved by the Office of Lawyer Disciplinary Counsel, said supervising attorney available to respond to inquiries by the Office of Disciplinary Counsel. The supervising attorney be required to meet with the respondent to conduct an initial review of the respondent's office practices, focusing upon calendaring, scheduling, a "tickler" system, mail handling, returning telephone calls and advising clients of the status of cases. Because the respondent only has approximately five clients, the supervising attorney and the respondent be required to meet once every two months, and submit a report to the Office of Disciplinary Counsel three times during the period of supervision. At these meetings, the respondent be required to report the status of all legal matters he has undertaken, report any oral or written complaints he has received from his clients or the Office of Disciplinary Counsel, and report any letters or

other inquiries to which he has not yet responded; (3) be required to continue taking all medication prescribed for his depression on a daily basis; (4) for a period of two years, be required to respond to an ethics complaint filed against him within thirty days of receipt thereof. The Office of Disciplinary Counsel will mail the request for a response to an ethics complaint by certified mail with return receipt requested, and will also mail a copy of the request for a response to an ethics complaint to respondent's counsel, Sherri D. Goodman, P. O. Box 1149, Charleston, WV 25324-1149, by first-class mail. In the event the respondent fails to respond to any such request within thirty days without good cause, upon proof of this failure to the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, respondent's license to practice law in the State of West Virginia be suspended for three months; and (5) be required to reimburse the Lawyer Disciplinary Board for the costs incurred in the investigation of this matter.

Upon consideration whereof, the Court is of opinion to and doth hereby adopt the aforesaid recommendations in part. It is hereby ordered that the respondent, John P. Stimmel, a member of The West Virginia State Bar, be, and he hereby is, admonished. It is further ordered that the respondent: (1) undergo a supervised practice for one year, with a supervising attorney approved by the Office of Lawyer Disciplinary Counsel, said supervising attorney available to respond to inquiries by the Office of Disciplinary Counsel. The supervising attorney shall meet with the respondent to conduct an initial review of the respondent's office practices, focusing upon calendaring, scheduling, a "tickler" system, mail handling, returning telephone calls and advising clients of the status of cases. Because the respondent only has approximately five

clients, the supervising attorney and the respondent shall meet once every two months, and shall submit a report to the Office of Disciplinary Counsel three times during the period of supervision. At these meetings, the respondent shall report the status of all legal matters he has undertaken, report any oral or written complaints he has received from his clients or the Office of Disciplinary Counsel, and report any letters or other inquiries to which he has not yet responded; (2) shall continue to take all medication prescribed for his depression on a daily basis; and (3) for a period of two years, shall respond to an ethics complaint filed against him within thirty days of receipt thereof. The Office of Disciplinary Counsel will mail the request for a response to an ethics complaint by certified mail with return receipt requested, and will also mail a copy of the request for a response to an ethics complaint to respondent's counsel, Sherri D. Goodman, P. O. Box 1149, Charleston, WV 25324-1149, by first-class mail. In the event the respondent fails to respond to any such request within thirty days without good cause, upon proof of this failure to the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, respondent's license to practice law in the State of West Virginia shall be suspended for three months, all for violating Rules 1.3 and 8.1(b) of the Rules of Professional Conduct.

Chief Justice Davis and Justice Maynard would have assessed the respondent costs incurred in the investigation of this matter. Chief Justice Davis believes that under the express provisions of Rule 3.12 of the Rules of Lawyer Disciplinary Procedure, which require the Clerk of the Supreme Court to establish a briefing schedule and provide notice to the parties whenever the Court does not concur with the recommended disposition of a lawyer disciplinary action, and basic due process principles,

it is clear that this Court does not have discretion to modify an action or imposition of costs without affording all parties an opportunity to respond. Indeed, "[t]he most fundamental due process protections are notice and an opportunity to be heard." *Norfolk and Western Ry. Co. vs. Sharp*, 183 W. Va. 283, 285, 395 S.E.2d 527, 529 (1990). In accordance with these legal dictates, she opines this case should have either been disposed of in the manner recommended by the parties or docketed for the submission of briefs by both parties.

Service of an attested copy of this order upon all parties shall constitute sufficient notice of the contents herein.

A True Copy

Attest:


Clerk, Supreme Court of Appeals