

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 10th of October, 2002, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 30191

H. John Taylor, a member of The West Virginia State Bar, Respondent

OCT 17 2002

On a former day, to-wit, July 15, 2002, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by J. Michael Benninger, its chairperson, pursuant to Rule 3.10 of the Rules of Lawyer Disciplinary Procedure, and presented to the Court its *Findings of Fact, Conclusions of Law and Recommendation* recommending that the respondent, H. John Taylor, a member of The West Virginia State Bar, (1) be reprimanded for his conduct; (2) pay the costs of hiring an attorney to complete the matter, said attorney to be contacted by the Office of Disciplinary Counsel and approved by the client; (3) be permitted to place his law license on inactive status with The West Virginia State Bar but shall, in the event he desires to return to the practice of law, contact the Office of Disciplinary Counsel with proof of mental and physical documentation that he is fit to resume the practice of law and have in place a plan for supervised practice for two years; (4) the supervising plan will be to assist the Respondent in the efficient management of his caseload and to ensure that his conduct does not recur. The supervising attorney must be approved by the Office of Disciplinary Counsel and be available to respond to inquiries by the Office of Disciplinary Counsel; and (5) reimburse the Lawyer Disciplinary Board for

its costs of this matter pursuant to Rule 3.5. of the Rules of Lawyer Disciplinary Procedure in the amount of \$192.55.

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, H. John Taylor: (1) be reprimanded for his conduct; (2) pay the costs of hiring an attorney to complete the matter, said attorney to be contacted by the Office of Disciplinary Counsel and approved by the client; (3) be permitted to place his law license on inactive status with The West Virginia State Bar but shall, in the event he desires to return to the practice of law, contact the Office of Disciplinary Counsel with proof of mental and physical documentation that he is fit to resume the practice of law and have in place a plan for supervised practice for two years; and (4) the supervising plan will be to assist the Respondent in the efficient management of his caseload and to ensure that his conduct does not recur. The supervising attorney must be approved by the Office of Disciplinary Counsel and be available to respond to inquiries by the Office of Disciplinary Counsel.

Chief Justice Davis 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*, 182 W.Va. 283, 285, 395 S.E.2d. 527 (1990). In accordance with these legal dictates, she opines that 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.

Justice Maynard would not impose disciplinary sanctions against the respondent.

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

A True Copy

Attest:


Clerk, Supreme Court of Appeals