

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. 24010

Richard H. Perlman, an inactive member of
The West Virginia State Bar, Respondent

On a former day, to-wit, July 3, 2002, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by David J. Romano, 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, Richard H. Perlman, an inactive member of The West Virginia State Bar, be indefinitely **suspended** until he meets the following conditions: (1) Respondent, at any time, within sixty (60) days after the date of this order, shall be permitted to seek reinstatement of his law license by filing an application for reinstatement setting forth, under oath, his complete work history including any activity as a practicing lawyer or the rendering of legal advice since January 1, 1998 through the present time of the application.

This application shall set forth whether the Respondent has acted in the capacity of an attorney at any time, rendered any legal advice of any kind or nature, with or without compensation, and the names of any clients that the Respondent has represented during this time period; should it be determined that the Respondent has acted as an attorney and practiced law in any State where he is unlicensed, or practiced while his license was

suspended in this State for failure to pay dues and be current on his CLE, then the Subcommittee Panel, as currently constituted, or as to be appointed by the then Chairperson and Lawyer of the Disciplinary Board, shall take this in to consideration on whether to grant reinstatement of the Respondent's license or to take such other further action as may be just under the circumstances; (2) Respondent shall also provide specific proof, under oath, that he is current as to all CLE requirements for the time period of January 1, 1998 through the present; (3) Respondent shall be current in all dues and pay all the costs as assessed for this proceeding before his license shall be reinstated upon any application for reinstatement; and (4) Respondent shall also complete an in-depth course in legal ethics on the West Virginia Rules of Professional Conduct, including what constitutes the practice of law, the role of candor in the practice of law, the loyalty to client interests, and other Rules that were specifically at issue in this disciplinary proceeding; any such legal ethics course shall be pre-approved by this Subcommittee Panel or one to be appointed by the Chairperson to assure that the course is adequate to satisfy the recommendation herein.

Upon consideration whereof, the Court is of opinion to and doth hereby adopt the recommendations in part. It is ordered that the respondent be indefinitely **suspended** until he meets the following conditions: (1) Respondent, at any time, within sixty (60) days after the date of this order, shall be permitted to seek reinstatement of his law license by filing an application for reinstatement setting forth, under oath, his complete work history including any activity as a practicing lawyer or the rendering of legal advice since January 1, 1998 through the present time of the application. This application shall set forth

whether the Respondent has acted in the capacity of an attorney at any time, rendered any legal advice of any kind or nature, with or without compensation, and the names of any clients that the Respondent has represented during this time period; should it be determined that the Respondent has acted as an attorney and practiced law in any State where he is unlicensed, or practiced while his license was suspended in this State for failure to pay dues and be current on his CLE, then the Subcommittee Panel, as currently constituted, or as to be appointed by the then Chairperson and Lawyer of the Disciplinary Board, shall take this in to consideration on whether to grant reinstatement of the Respondent's license or to take such other further action as may be just under the circumstances; (2) Respondent shall also provide specific proof, under oath, that he is current as to all CLE requirements for the time period of January 1, 1998 through the present; (3) Respondent shall be current in all dues before his license shall be reinstated upon any application for reinstatement; and (4) Respondent shall also complete an in-depth course in legal ethics on the West Virginia Rules of Professional Conduct, including what constitutes the practice of law, the role of candor in the practice of law, the loyalty to client interests, and other Rules that were specifically at issue in this disciplinary proceeding; any such legal ethics course shall be pre-approved by this Subcommittee Panel or one to be appointed by the Chairperson to assure that the course is adequate to satisfy the recommendation herein.

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*, 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 Albright would annul the respondent's license to practice law, without imposing costs.

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