

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 6th day of July, 1995, the following order was made and entered:

Office of Disciplinary Counsel, Petitioner

vs.) No. 22907

Fred D. Clark, an inactive member of The West Virginia State Bar, Respondent

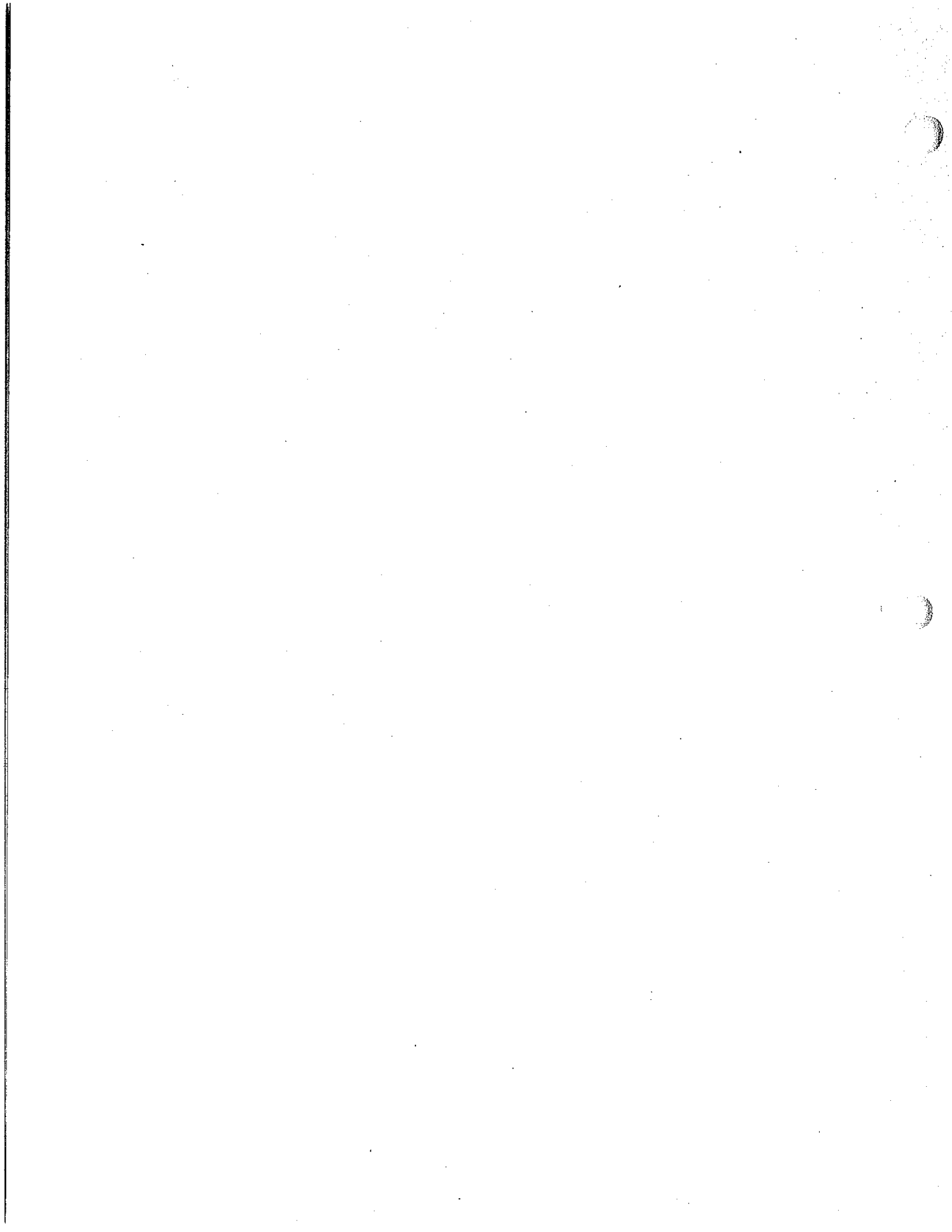
The Court today handed down a prepared order in the above-captioned proceeding imposing an administrative suspension of the respondent's license to practice law in the State of West Virginia on the ground of disability.

A True Copy

Attest:



Clerk, Supreme Court of Appeals

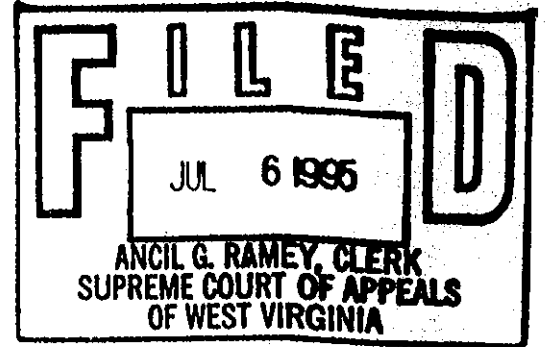


Per Curiam:

Office of Disciplinary Counsel,
Petitioner

vs.) No. 22907

Fred D. Clark, an inactive member
of The West Virginia State Bar,
Respondent



This is a proceeding instituted by the Office of Lawyer Disciplinary Counsel pursuant to Rule 3.23 of the Rules of Lawyer Disciplinary Procedure, which permits this Court to impose an administrative suspension on any lawyer whom it concludes "is disabled from continuing the practice of law by reason of . . . addiction to drugs or alcohol." On June 1, 1995, this Court entered an order scheduling this matter for hearing on June 27, 1995, and directing the respondent to file a brief on or before June 19, 1995. A certified copy of this order mailed to the respondent's last known address was returned unclaimed and no reply was received to notice by first-class mail.

In its petition, the Office of Lawyer Disciplinary Counsel indicates that the respondent was indicted in the January 1995 Term of the Circuit Court of Kanawha County for the felony offense of driving under the influence of alcohol, third offense, following previous drunk driving convictions in 1986 and 1988. The

petition further indicates that it had received a complaint from one of the respondent's clients after he failed to appear at a trial scheduled for February 7, 1995, and that when contacted at home about his absence by the client's mother, she reported that he sounded "like he was drunk." Later, the respondent admitted to a disciplinary investigator that he failed to appear for trial, but recalled that he had consumed only three or four beers that day. Additionally, attached to the petition is an affidavit from the respondent's former associate, Michael V. Marlow, indicating that the respondent "was away from the office with unexplained absences at various times during 1994 and from November 4, 1994, until January 3, 1995. . . . [and] from February 7, 1995 until March 3, 1995." Finally, the respondent admitted to a disciplinary investigator that "he was, in fact, an alcoholic;" that "he had a problem with alcohol since the 1980's;" that "he twice had undergone in-patient treatment for alcoholism;" and that "he engaged in binge drinking for extended periods of time."

On March 17, 1995, the respondent entered into an agreement with the Office of Lawyer Disciplinary Counsel whereby he would enroll as an inactive member of The West Virginia State Bar effective March 27, 1995; undergo an evaluation to determine the extent of his addiction to alcohol; and adhere to any course of treatment recommended by the evaluator. Upon successful completion of this course of treatment, the agreement provided that the respondent would be reinstated to active status. The Office of Lawyer Disciplinary Counsel, pursuant to

the agreement, reserved the right to proceed under Rule 3.23 of the Rules of Lawyer Disciplinary Procedure if the respondent violated any aspect of the agreement. For several weeks, the respondent complied with the agreement and adhered to the recommended course of treatment for his alcohol addiction. On May 11, 1995, however, he ceased attending group sessions and apparently suffered a relapse.

We believe the Office of Lawyer Disciplinary Counsel has amply demonstrated, pursuant to Rule 3.23(a) of the Rules of Lawyer Disciplinary Procedure, that the respondent "is disabled from continuing the practice of law by reason of . . . addiction to . . . alcohol." He was afforded a reasonable opportunity to avoid suspension, but failed to adhere to the recommended course of treatment. Accordingly, we hereby impose an administrative suspension of the respondent's license to practice law on the ground of disability.

License Suspended.

