

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on February 23, 2022, the following order was made and entered:

Lawyer Disciplinary Board,
Petitioner

vs.) No. 21-0178

Kirk H. Bottner, a member of
The West Virginia State Bar,
Respondent

ORDER

On November 23, 2021, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by its Chair Stephen M. Mathias, in accordance with Rule 3.10 of the Rules of Lawyer Disciplinary Procedure, filed its written recommended disposition in this matter, recommending that:

- (1) Respondent's law license be suspended for a period of two (2) years with the first six (6) months to be served and the final eighteen (18) months stayed and served on probation. If Respondent fails to comply with any of the conditions imposed during the first six (6) months stay, there be an immediate suspension of the stay and respondent serve the remaining of the two-year suspension.
- (2) Respondent must extend his commitment with the West Virginia Judicial and Lawyer Assistance Program for an additional two-year period.
- (3) Respondent speak to the next two (2) graduating classes of the West Virginia University School of Law about the consequences attorneys may face if they exercise the use of any illegal substance.
- (4) Respondent comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure.
- (5) Respondent participate in twelve (12) additional hours of continuing legal education in the area of substance abuse prior to petitioning for reinstatement; and

(6) Respondent be ordered to pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

On December 27, 2021, the Office of Disciplinary Counsel, by Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, filed its consent to the recommendation. The respondent, by counsel, Lonnie C. Simmons, DiPiero Simmons McGinley & Bastress, PLLC, filed his consent to the recommendation on December 28, 2021.

Upon consideration, the Court is of the opinion to and does concur with and approve the recommended disposition of the Hearing Panel Subcommittee of the Lawyer Disciplinary Board. It is ORDERED that:

- (1) The license to practice law in the State of West Virginia of the respondent, Kirk H. Bottner, is suspended for a period of two (2) years, with the first six (6) months of the suspension to be served and the final eighteen (18) months of the suspension stayed and served on probation, effective February 28, 2022. If Respondent fails to comply with any of the conditions imposed in this order during the first six (6) months of the eighteen-month stay of suspension, the stay will immediately end and respondent's license to practice law will be suspended for the remainder of the two-year suspension.
- (2) Respondent must extend his commitment with the West Virginia Judicial and Lawyer Assistance Program for an additional two-year period.
- (3) Respondent is directed to speak to the next two (2) graduating classes at West Virginia University School of Law about the consequences attorneys may face if they use any illegal substance.
- (4) Respondent must comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure.
- (5) Respondent must complete an additional twelve (12) hours of continuing legal education in the area of substance abuse over and above the hours required during the current reporting period, prior to petitioning for reinstatement; and
- (6) Respondent shall pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Justice Armstead does not concur with the recommendation of the Hearing Panel Subcommittee and would set the matter for oral argument.

Justice Alan D. Moats sitting by temporary assignment.

Service of a copy of this order upon the respondent, Kirk H. Bottner, the Office of Lawyer Disciplinary Counsel, and the West Virginia State Bar, constitutes sufficient notice of the contents.

A True Copy

Attest: /s/ Edythe Nash Gaiser
Clerk of Court

