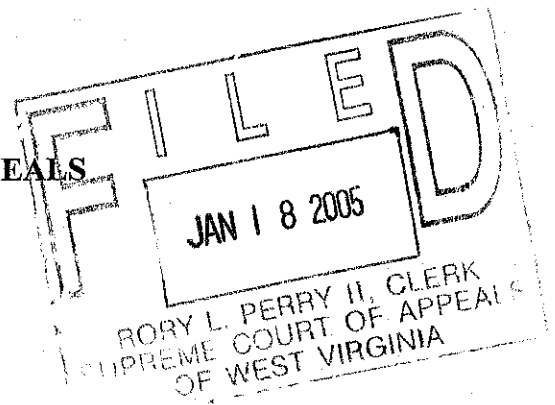


BEFORE THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA



LAWYER DISCIPLINARY BOARD

Complainant,

vs.

No.: 30599

**L. THOMAS LAKIN, not licensed with
the West Virginia State Bar,**

Respondent.

BRIEF OF L. THOMAS LAKIN

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I. KIND AND NATURE OF PROCEEDINGS

This is in respect to a disciplinary proceeding against L. Thomas Lakin ("Respondent") initiated by the Lawyer Disciplinary Board ("Complainant"). It stems from the Statement of Charges issued by the Complainant's Investigative Panel on or about March 14, 2002, which charges included alleged improper solicitation and improper compensation for individuals soliciting on the Respondent's Behalf.

On or about February 3, 2003, a fully executed Joint Stipulated and Recommended Discipline statement was submitted to the Hearing Panel Subcommittee. This was rejected and on June 15 and 16, 2004, a hearing upon the Statement of Charges was held at the offices of the Lawyer Disciplinary Board in Charleston WV. Joyce Morton, Esq. was the Chair of the Hearing Panel Subcommittee ("Panel"), which further consisted of Mike Benninger, Esq. and Lawrence Crimmins. The Complainant was represented by the Office of Disciplinary Counsel ("ODC") in the persons of W. Henry Jernigan, Esq. and Brace R. Mullett, Esq. Respondent was present personally, and represented by counsel James D. McQueen, Jr. Esq. and Brian Casto, Esq.

Near the end of presentation of Complainant's case in chief, the panel requested that the ODC and Respondent discuss a joint stipulation and recommended discipline. As one had been previously agreed to, the parties easily reached agreement upon these same terms. On October 13, 2004 the Panel submitted to this Court a Joint Stipulated and Recommended Discipline in this matter. Both ODC and Respondent, had, of necessity, agreed to this and presented their consent to the Joint Stipulated and Recommended Discipline to this Court.

It is worth noting and reiterating to this Court, that, at no time has any finding of fact been entered that the Respondent has engaged in any of the conduct of which he stood accused. Respondent nevertheless, out of his strong desire to eschew the very appearance of

impropriety was and is prepared to agree to the recommended sanctions set forth. Respondent has been a licensed attorney with a practice which covered a multitude of jurisdictions and has been practicing for 35 years. No evidence was produced that he has ever been the subject of any sort of discipline at any point in his legal career.

II. STANDARD OF REVIEW

In Lawyer Disciplinary matters this court has held that the standard of review is *de novo*, as it applies to questions of law, application of the law to the facts at issue, and the appropriate sanction to be imposed. *Roark v. Lawyer Disciplinary Board*, 201 W.Va. 181, 495 S.E.2d 552 (1997); *Committee on Legal Ethics v. McCorkle*, 192 W.Va. 286, 452 S.E.2d 3777 (1994). This Court has held that it will give respectful consideration to the Complainant, Lawyer Disciplinary Board's ("Board") recommendations as to questions of law and the appropriate sanction, while ultimately exercising its own judgment. *McCorkle*, 452 S.E.2d at 381.

This Court has held that it will give substantial deference to the board's findings of fact unless the findings are not supported by reliable, probative and substantial evidence on the whole record. *McCorkle, Id. Lawyer Disciplinary Board v. Cunningham* 195 W.Va. 27, 464 S.E.2d 181 (1995). Before this Court, "[t]he burden is upon the [Respondent] to show that he factual findings are not supported by reliable, probative, and substantial evidence on the whole adjudicatory record made before the Board." *Cunningham* 464 S.E.2d at 189; *McCorkle* 452 S.E.2d at 381.

The charges leveled against an attorney must be proven by clear and convincing evidence pursuant to Rule 3.7 of the Rules of Lawyer Disciplinary Procedure. Syl. Pt. 1, *Lawyer Disciplinary Board v. McGraw*, 194 W.Va. 788, 461 S.E.2d 850 (1995). This Court is the final arbiter if legal ethics charges and must make the ultimate decisions about public reprimands,

suspensions or annulments of attorney's licenses to practice law. Syl. Pt. 3, *Committee on Legal Ethics v. Blair*, 174 W.Va. 494, 327 S.E.2d 671 (1984); Syl. Pt. 7, *Committee on Legal Ethics v. Karl*, 192 W.Va. 23, 449 S.E.2d 277 (1994).

III. STATEMENT OF FACTS

Respondent is an attorney now licensed in the State of Illinois. His law firm has been in continuous practice since 1976 and he has been a licensed attorney for 35 years. (Transcript Vol. II, p. 7-8.) Now, Respondent is semi-retired; his last case settled in December 2003. (Id., p. 20.) He lives in Malibu California, and is principally involved with his gaming business, as well as political, social and charitable activities. (Id, p. 30-31.) Respondent, a former polio sufferer, chairs his local March of Dimes committee, is active with Habitat for Humanity, and is active in Democratic politics—serving as a superdelegate to the Democratic National Convention and undertaking activities on behalf of the Democratic National Committee. (Id.) His work now could be described as being in a political/public relations capacity.

Respondent has never been a member of the West Virginia bar, but has been admitted to practice on occasion in this state on a *pro hac vice* basis. Respondent does not now contest, nor has he ever contested, the jurisdiction of this Court or the Board over him in this matter.

On September 17, 1997, Menis E. Ketchum, an attorney duly licensed by and practicing in the State of West Virginia, filed a complaint with the Board along with a transcript of sworn testimony by Kevin Berry. Berry alleged that following a construction accident on an interstate highway bridge near Kenova, WV, in the spring of 1997, he was approached by Howard Pederson, chief investigator for the Lakin Law Firm. Contrary to Complainant's

chronology in their brief at p.4, this contact occurred following an incident in which Mr. Berry was contacted by an individual named Al Richter of California, PA.

Mr. Richter and a stepson of a co-worker of Mr. Berry's came to Berry's house and attempted to persuade him to engage the Lakin Law Firm as his counsel. Despite being advised by Berry that he was already represented by Mr. Ketchum, Richter continued to persuade Berry to engage the Lakin Law Firm and allegedly inquired of Berry how he knew that he could trust Ketchum not to sell out his interests. It is worth noting that, although Richter is a former client of the Lakin Law Firm, at no time has Richter ever been on the payroll of or otherwise compensated by the Lakin Law Firm. Any activity he undertook was upon his own volition.

Contrary to the representations of Complainant, Howard Pederson, who is a duly-employed employee of the Lakin Law Firm, testified that he contacted Berry as a potential fact witness on behalf of other individuals injured in the same incident. Upon inquiry he learned Berry was represented and terminated his conversation with him, encouraging Berry to have his attorney, Mr. Ketchum to contact him. (Transcript Vol. II, p. 69-70.)

The Complaint filed by Mr. Ketchum, stimulated an investigation by the ODC. A statement of charges followed on March 14, 2002 alleging Respondent had violated Rules 7.1, 7.2(c), 7.3(a), 7.3(b), 7.3(c), 8.4(a) and 8.4(c) of the West Virginia Rules of Professional Conduct, engaging in a pattern and practice of improper solicitations from WV residents.

On April 11, 1999, Gladys and Denver Copley, residents of Williamson WV, and clients of Mr. Ketchum, filed a complaint with the Board alleging that in 1998 following Mr. Copley's injuries while working as a railroad employee that they received a series of phone calls and visits from G. Colin Kelley, a former supervisor of Mr. Copley's at the railroad. The Copleys met with representatives from the Lakin law firm; a fact which is not in dispute. These representatives, Brad Lakin and Charles Armbruster, according to their testimony, believed the

Copleys were sincerely interested in retaining the Lakin Law Firm as counsel and attempted to answer questions they might have about their case, generally. The Copleys later engaged alternative representation, and ultimately, ended up being represented by Mr. Ketchum. Following their engagement of Ketchum, they allege they were continually contacted by Mr. Kelley. In a deposition given by Mr. Kelley, he denied this, and claimed that he did not attempt to influence their selection of counsel, only to the extent that he informed them that it would be advisable that they be represented by a firm which had bested the railroad in question as the railroad would not respect firms which had not done so and to remind them not to miss statutes of limitation for filing. Contrary to the representation of Complainant in their brief at p.5, Mr. Kelley denied he had repeatedly tried to solicit on behalf of the Lakin Law Firm and is and was in no way ever retained or employed by the Lakin Law Firm for any purpose.

Based upon the Copley's Complaint, the ODC investigated. A statement of charges followed on March 14, 2002 alleging Respondent had violated Rules 7.2(c), 7.3(a), 7.3(b), 7.3(c) and 8.4(a) of the West Virginia Rules of Professional Conduct, engaging in a pattern and practice of improper solicitations from WV residents.

In his Answer dated July 10, 2002, Respondent denied that he, or any person acting on his behalf or that of his firm, had engaged in conduct violating the West Virginia Rules of Professional Conduct, either in the manner alleged or otherwise. While Respondent is perfectly willing to submit to the Recommended Discipline--again, in order to avoid any appearance of unethical or improper behavior--he continues to deny that he engaged in any wrongdoing of any sort.

IV. ARGUMENT

This matter has been before the West Virginia Disciplinary Board, the Office of Disciplinary Counsel and the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, and now before this Court. Twice, a Joint Recommended Stipulation and Recommended Discipline has been submitted and twice rejected. Submitted, once, by the parties to the Panel, and second, by the Panel, following two days of testimony from all parties as to the issues involved, to this Court. This Court refused entry of the recommendation by a 3-2 decision by an Order of this Court dated November 10, 2004.

This Court held in the matter of *In Re Brown* that it was not “foreclosed from making an independent assessment of the record, but...absent a showing of some mistake of law or arbitrary assessment of the facts ...recommendations made by the Ethics Committee...[were] to be given substantial consideration.” (citations omitted) *In Re Brown*, 166 W.Va. 226, 236, 273 S.E.2d 567, 572, (1980). There has been, to the knowledge of either Respondent or Complainant, no showing of any mistake of law or fact; nor, can the judgment of the Panel, after two days of evidence, hardly be called arbitrary. Therefore, the judgment of the Panel should be given the “substantial consideration” this Court stated it would give in *Brown* or in *McCorkle*. See *McCorkle* 452 S.E.2d at 380.


This Respondent has no objections to the Complainant’s position that the Joint Stipulated and Recommended Discipline be entered. It has been the position of Respondent from the beginning of this matter, that, rather than subject this Court and the taxpayers to a prolonged battle over the Respondent’s actions, it would be better to avoid any appearance of improper behavior and graciously submit to discipline. The Respondent is now, following the conclusion of this lengthy process, now in a state of virtual retirement, no longer actively practicing law, concentrating upon activities and interests which are dear to his heart and which he believes are

for the betterment of his community. He continues to believe that entry of the Joint Stipulated and Recommended Discipline is the best possible outcome for this matter.

The Panel has been called by this Court the body that was in the best position to evaluate the testimony presented by both parties. *Brown, supra.* It has done so, and recommended the Joint Stipulated and Recommended Discipline be entered. There has been no showing that such entry would be based upon any mistake of law or fact, nor that it is arbitrary and therefore, should stand as the fairest and most fitting resolution of this matter.

V. Conclusion.

Based upon the foregoing, the Respondent L. Thomas Lakin respectfully requests that this Court accept the Recommendation of the Hearing Panel Subcommittee as consented to by the Complainant and Respondent.



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Respondent.

CERTIFICATE OF SERVICE

The undersigned, of counsel for respondent, does hereby certify that the foregoing **Fact Witness List** has been served upon the following counsel of record and the Hearing Panel Subcommittee by this day mailing to them true copies thereof:

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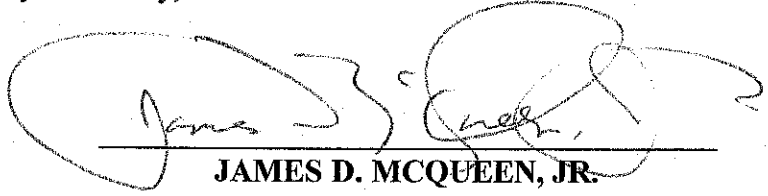
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Done this 14th day of January, 2005.



A handwritten signature in cursive script, appearing to read "James D. McQueen, Jr.", is written over a horizontal line. The signature is enclosed within a large, loopy scribble.

JAMES D. MCQUEEN, JR.
BRIAN O. CASTO