IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2000 Term

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No. 27264

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OFFICE OF DISCIPLINARY COUNSEL,
Petitioner

v.

DONALD L. PITTS, an administratively suspended
member of the West Virginia State Bar,
Respondent

Lawyer Disciplinary Proceeding

PETITION GRANTED; INDEFINITE SUSPENSION;
RECEIVER ORDERED

Submitted: April 11, 2000
Filed: May 8, 2000

Amie L. Johnson, Esquire
Assistant Disciplinary Counsel
Charleston, West Virginia
Attorney for Petitioner

Donald L. Pitts, Esquire
Wheeling, West Virginia
Attorney for Respondent, Pro Se

The Opinion of the Court was delivered PER CURIAM.

JUSTICE STARCHER concurs and reserves the right to file a concurring Opinion.

*JUSTICE MCGRAW dissents and reserves the right to file a dissenting Opinion.

*On September 27, 2000, JUSTICE MCGRAW withdrew his right to file a dissenting Opinion and simply dissents.

SYLLABUS

"'Under the authority of the Supreme Court of Appeal's inherent power to supervise, regulate and control the practice of law in this State, the Supreme Court of Appeals may suspend the license of a lawyer or may order such other actions as it deems appropriate, after providing the lawyer with notice and an opportunity to be heard, when there is evidence that a lawyer (1) has committed a violation of the Rules of Professional Conduct or is under a disability and (2) poses a substantial threat of irreparable harm to the public until the underlying disciplinary proceeding has been resolved.' Syl. Pt. 2, Committee on Legal Ethics v. Ikner, 190 W. Va. 433, 438 S.E.2d 613 (1993)." Syllabus, Office of Lawyer Disciplinary Counsel v. Butcher, 197 W. Va. 162, 475 S.E.2d 162 (1996).

Per Curiam:

This case is before the Court upon the Report Concerning Disability filed by the Office of Disciplinary Counsel ("ODC") regarding the Respondent, Donald L. Pitts, an administratively suspended member of the West Virginia State Bar.[1] The ODC requests this Court to indefinitely suspend the Respondent's law license.[2] The ODC additionally requests that this Court authorize the Chief Judge of the Tenth Judicial Circuit to appoint an attorney to inventory the Respondent's files and take action to protect the clients' interest.[3] Finally, the ODC requests that the Court hold in abeyance any ethics complaints filed and/or pending against the Respondent until he is able to defend himself. Based upon a review of the record in this case,[4] we grant the suspension, as well as the other relief sought by the ODC.[5]

FACTS

According to the Report Concerning Disability, the Respondent, a solo practitioner in

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[1]The Respondent was administratively suspended by the Court on November 10, 1999, for non-payment of bar dues. He has not taken any action to have his law license reinstated.

[2]Rule 3.27 of the Rules of Lawyer Disciplinary Procedure sets forth the procedure to be used by both the ODC and this Court in handling cases which involve a lawyer who has a disability.

[3]Rule 3.29 of the Rules of Disciplinary Procedure provides for the appointment of a lawyer and/or lawyers to inventory the files of a suspended lawyer and "to take such action as seems indicated to protect the interests of the lawyer and the lawyer's clients." Id.

[4]The Respondent failed to file any responsive pleading in this matter.

[5]On February 17, 2000, this Court ordered that any ethics complaints filed and/or pending against the Respondent be held in abeyance until further order of this Court. Further, we authorized the Honorable John Hutchison, Chief Judge of the Circuit Court of Raleigh County, to appoint a lawyer or lawyers to inventory the Respondent's files and "to take such action as seems indicated to protect the interests of the respondent and the interests of the clients."

Raleigh County, was admitted to the West Virginia State Bar on May 16, 1970. In November 1998, the Respondent was hospitalized and reportedly returned to work on a part-time basis in late January 1999. Then, in April of 1999, the Respondent underwent quintuple heart bypass surgery. The Respondent also suffers from other serious medical problems, including hypoglycemia.

In June 1999, the Respondent's former secretary sent letters to clients advising them of the Respondent's health problems and that he would be returning to work in October of 1999. Disciplinary Counsel spoke with the Respondent on September 21, 1999. During that conversation, the Respondent indicated that he was still experiencing health problems and was unable to work, although he had completed cardiac rehabilitation. The Respondent expressed a willingness to be administratively suspended.

The Respondent's law office has been closed since June 22, 1999. The Respondent apparently has tried, to no avail, to make arrangements with other lawyers to monitor his cases during his absence. Neither the Respondent, nor anyone on his behalf, has been in contact with the Respondent's clients for many months. There are numerous disciplinary matters pending concerning the Respondent's conduct since his health problems began.

ISSUE

The only issue before the Court is whether the Respondent's law license should be suspended pursuant to Rule 3.27 of the Rules of Lawyer Disciplinary Procedure. The ODC asserts that the Respondent's disability has caused him to commit numerous ethical violations. Further, the ODC argues that the Respondent poses a substantial threat of irreparable harm to the public.

This Court examined a case analogous to the instant one in Office of Lawyer Disciplinary Counsel v. Butcher, 197 W. Va. 162, 475 S.E.2d 162 (1996).[6] In Butcher, a lawyer was allegedly suffering from a mental illness which caused him to be disabled from the practice of law and which also caused him to commit numerous and substantial violations of the Rules of Professional Conduct. In deciding to suspend the lawyer's license indefinitely in Butcher, we relied upon the following:

> "Under the authority of the Supreme Court of Appeal's inherent power to supervise, regulate and control the practice of law in this State, the Supreme Court of Appeals may suspend the license of a lawyer or may order such other actions as it deems appropriate, after providing the lawyer with notice and an opportunity to be heard, when there is evidence that a lawyer (1) has committed a violation of the Rules of Professional Conduct or is under a disability and (2) poses a substantial threat of irreparable harm to the public until the underlying disciplinary proceeding has been resolved." Syl. Pt. 2, Committee on Legal Ethics v. Ikner, 190 W. Va. 433, 438 S.E.2d 613 (1993).

197 W. Va. at 163, 475 S.E.2d at 163, syllabus.

In the instant case, the facts undeniably reflect that the Respondent is suffering from a physical disability brought about by his heart condition, as well as the other serious medical problems from which he suffers. It is also uncontroverted by the Respondent that his medical condition has forced him essentially to abandon his law practice, thereby jeopardizing both his and his client's legal interests.

We, therefore, find it necessary to suspend the Respondent's law license until further order

[6] See Office of Disciplinary Counsel v. Battistelli, 193 W. Va. 629, 457 S.E.2d 652 (1995) (addressing, in greater detail, extraordinary procedures set forth in Rule 3.27 as they relate to extreme lawyer misconduct).

of the Court. We further order that any ethics complaints filed and/or pending against the Respondent be held in abeyance pending further order of this Court. The Respondent is required, pursuant to Rule 3.24(a) of the Rules of Lawyer Disciplinary Procedure, to petition this Court for reinstatement of his law license when he can demonstrate by clear and convincing evidence that his disability has been removed and that he is physically fit to resume the practice of law. Id. Finally, the Court authorizes the Honorable John Hutchison, Chief Judge of the Tenth Judicial Circuit, to continue the appointment of a lawyer or lawyers to inventory the Respondent's files and to take such action as indicated to protect the interests of both the Respondent and his clients.

Petition Granted; Indefinite Suspension; Receiver Ordered.