

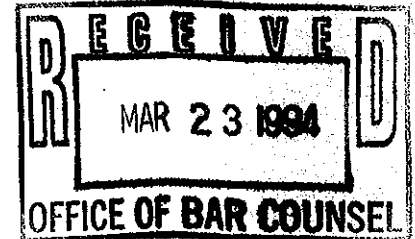
STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 17th day of February, 1994, the following order was made and entered:

The Committee on Legal Ethics of The West Virginia State Bar, Complainant

vs.) No. 21717

Abishi C. Cunningham, a member of The West Virginia State Bar, Respondent




The Court today handed down a prepared order in the above-captioned proceeding ordering the respondent, Abishi C. Cunningham, a member of The West Virginia State Bar, to pay the amount of Two Thousand Two Hundred Forty-Seven Dollars and Sixty-Seven Cents (\$2,247.67) to the Committee on Legal Ethics of

The West Virginia State Bar on or before the 30th day of June, 1994, pursuant to the rule to show cause issued by this Court on the 17th day of November, 1993.

A True Copy

Attest:


Clerk, Supreme Court of Appeals

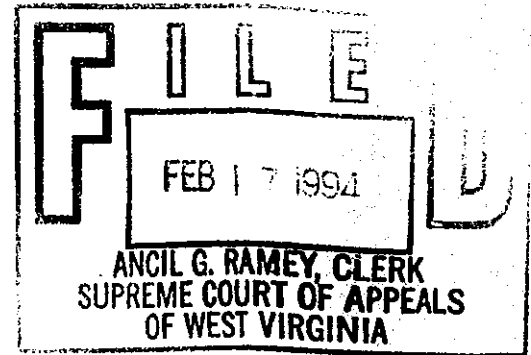
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Per Curiam:

Committee on Legal Ethics
of the West Virginia State Bar

No. 21717 v.

Abishi Cunningham,
a member of the West Virginia State Bar



The West Virginia Committee on Legal Ethics ("Legal Ethics") petitions this Court for a rule to show cause regarding attorney Abishi Cunningham's failure to pay court costs of \$2247.67, an amount set forth in an agreement between Legal Ethics and Mr. Cunningham and approved by this Court on July 8, 1993. We find that Mr. Cunningham has not yet fulfilled the legal obligation to which he bound himself in the agreement and hereby order the payment of the entire \$2247.67 by June 30, 1994.

I.

This matter arose through an investigation into allegations by clients of Mr. Cunningham that he had neglected a matter entrusted to him, a violation of Disciplinary Rule 6-101(A)(3) of the West Virginia Code of Professional Responsibility.¹ While the specific

¹DR 6-101(A)(3) of the Code of Professional Responsibility was in effect at the time of Mr. Cunningham's alleged violations. The Code of Professional Responsibility, promulgated on June 9, 1970, was replaced by the Rules of Professional Conduct, promulgated and adopted by this Court on June 30, 1988, effective January 1, 1989.

allegations of the underlying incident are not relevant to the determination before the Court at this time, the general allegations concerned Mr. Cunningham's consultation with two individuals regarding a possible medical malpractice claim following the death of the individuals' father. Mr. Cunningham contended that he informed the clients that they had no claim; however, the clients maintained that Mr. Cunningham told them the civil action had been filed and was progressively well.

Subsequent to an investigation by Legal Ethics, an agreement was reached between Legal Ethics and Mr. Cunningham whereby Mr. Cunningham would be publicly reprimanded and would pay court costs of \$2247.67. The precise arrangements for the payment of that amount, however, are in dispute. Legal Ethics contends that Mr. Cunningham was informed that he could pay the amount in monthly installments, as long as the entire amount was paid by June 30, 1994. Mr. Cunningham, however, contends that installments were not due on any regular basis and that he had until June 30, 1994, to pay the entire \$2247.67. Although Legal Ethics drafted a letter, dated September 23, 1993, which would have bound Mr. Cunningham to the monthly installment method, Mr. Cunningham refused to sign that letter. Thus, the only binding arrangement is the July 8, 1993, public reprimand issued by this Court (based upon the agreement between Legal Ethics and Mr. Cunningham) and providing that Mr. Cunningham would pay the \$2247.67. No mention of the time frame for the payments is made in that order.

II.

Legal Ethics now petitions this Court to find that Mr. Cunningham has violated the agreement by failing to make monthly installments and to require Mr. Cunningham to pay the entire amount immediately. In the absence of any written agreement for monthly installments, however, we cannot conclude that the entire amount is payable immediately.²

We do, however, order that the entire amount is to be paid by June 30, 1994. If Mr. Cunningham wishes to pay the amount in installments between now and June 30, 1994, such arrangement would certainly be acceptable to this Court. However, regardless of the number of installments or the monetary amount of each installment, the entire amount of \$2247.67 is to be tendered by Mr. Cunningham to Legal Ethics by June 30, 1994.

It is so Ordered.

²Any supposed agreement as to the payment of any amount in monthly installments should have been reduced to writing and signed by both parties. While an attempt was made to do exactly this in the present case, such attempt was made quite some time after the initial agreement, and Mr. Cunningham refused to sign it. It would perhaps be advisable for Legal Ethics to include the installment arrangements within the initial agreement, or at least make certain that it has a signed agreement of some nature, prior to any attempt to petition this Court to intervene to require payment in a case such as this.

