

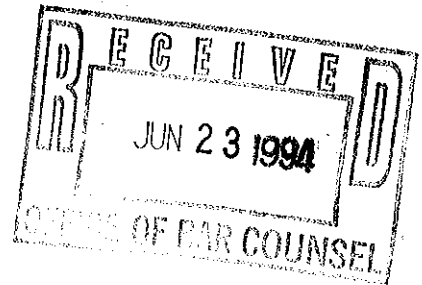
STATE OF WEST VIRGINIA

At a Regular term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 20th day of May, 1994, the following order was made and entered:

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

vs.) No. 22132

Robert M. Fletcher, a member of The
West Virginia State Bar, Respondent



The Court today handed down a prepared order issuing a public reprimand of the respondent, Robert M. Fletcher, a member of The West Virginia State Bar, and requiring respondent to reimburse the Committee on Legal Ethics of The West Virginia State Bar for the costs and expenses incurred in the investigation and hearing of the above-captioned matter in the amount of Four Hundred Seventeen Dollars and Fifty-Nine Cents (\$417.59).

Service of an attested copy of this order upon the respondent shall constitute notice of the contents herein.

A True Copy

Attest:

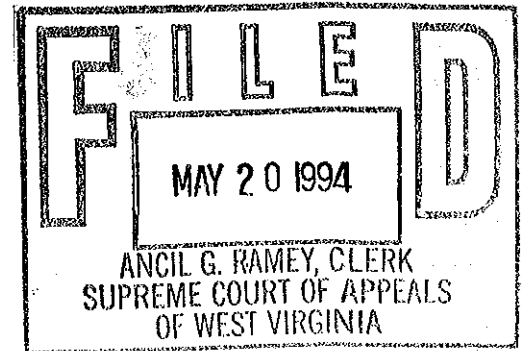
Clerk, Supreme Court of Appeals

Per Curiam:

The Committee on Legal Ethics
of the West Virginia State Bar

No. 22132 v.

Robert M. Fletcher, a member
of the West Virginia State Bar



In this legal ethics proceeding, the Committee on Legal Ethics of the West Virginia State Bar requests that this Court issue a public reprimand against the respondent, Robert M. Fletcher.¹ The Committee further recommends that respondent pay costs in the amount of \$417.59.

The Committee charges that the respondent failed to timely complete a matter he heard as fiduciary commissioner in violation of Rule 8.4(d) of the Rules of Professional Conduct.² While no response was filed in this Court to the Committee's complaint, the respondent contended below that he is not subject to the Committee's jurisdiction in this matter because a nonlawyer may be appointed a fiduciary commissioner.³ However, the fact that a

¹Justice Workman, deeming herself disqualified, did not participate in the consideration or decision of this case.

²Rule 8.4(d) of the Rules of Professional Conduct states as follows: "It is professional misconduct for a lawyer to: * * * (d) engage in conduct that is prejudicial to the administration of justice[.]"

³It is possible for a layperson to become eligible to be appointed as a fiduciary commissioner under W. Va. Code, 44-3-1 (1982), by meeting the requirements contained in W. Va. Code, 44-3A-3 (1982).

nonlawyer would not be subject to the Rules does not mean that the respondent as a lawyer is not subject to them.

The facts in this proceeding stem from the respondent's appointment on September 7, 1989, as fiduciary commissioner of the Margaret Howes Estate. The purpose of the appointment was for the respondent to hold a hearing to resolve a dispute over certain expenditures made by the decedent's sisters. After the initial referral to the respondent in September, 1989, a hearing was scheduled for October 16, 1989. The matter was submitted for a recommended decision at this hearing.

On July 17, 1991, an attorney for one of the beneficiaries of the Howes Estate wrote the respondent requesting that he make a ruling. The respondent failed to rule and the beneficiary contacted the West Virginia State Bar by letter dated August 20, 1991. Bar counsel contacted the respondent on August 23, 1991, and the respondent informed her that he intended to rule within a month.

When the respondent failed to rule, Bar counsel wrote him on December 16, 1991, and requested a decision on the matter as soon as possible. The respondent again failed to issue a ruling. Bar counsel mailed the respondent a copy of a letter dated March 5, 1992, addressed to a beneficiary of the estate. That letter stated that the respondent's failure to render a decision would result in

the matter being brought to the attention of the Investigative Panel of the Committee on Legal Ethics of the State Bar.

Bar counsel presented this matter to the Investigative Panel at its April 11, 1992, meeting. The Investigative Panel directed Bar counsel to write the respondent a letter urging him to rule. A letter dated June 12, 1992, was written to the respondent. However, the respondent failed to rule and a member of the Investigative Panel contacted the respondent on August 19, 1992, to discuss the delay in processing the Howes Estate. The respondent represented that he would complete the report prior to October, 1992. A recommended decision in the Howes Estate was not made until August 19, 1993.

The respondent also failed to rule timely in the Estate of Minnie M. Evans. That matter was ripe for a decision in May, 1992. The respondent issued a recommended decision on the Evans Estate on August 18, 1993, after repeated requests.

We have in several cases found that lawyers who were acting in some administrative capacity could be subject to the Rules of Professional Conduct. In Committee on Legal Ethics v. Veneri, 186 W. Va. 210, 411 S.E.2d 865 (1991), we found that the lawyer acting as the administrator of his mother's estate was acting improperly and, therefore, was subject to disciplinary action. See also Committee on Legal Ethics v. Smith, 184 W. Va. 6,

399 S.E.2d 36 (1990). Thus, we conclude that Mr. Fletcher is subject to the Rules of Professional Conduct.

There was no evidence offered to explain the substantial delay in concluding the matters pending before the respondent. Consequently, we find the Committee has met its burden of proving its charges "'by full, preponderating and clear evidence[.]'" Syllabus Point 1, in part, Committee on Legal Ethics v. Veneri, supra, quoting Committee on Legal Ethics v. Lewis, 156 W. Va. 809, 197 S.E.2d 312 (1973). Therefore, after reviewing these matters, we accept the Committee's recommendation and issue a public reprimand against the respondent and order that the respondent pay the costs of these proceedings in the amount of \$417.59.