

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on October 14, 2015, the following order was made and entered:

In re: Approval of Amendments to Rule 3.29 of the Rules of Lawyer Disciplinary Procedure

By order of June 17, 2014, the Court approved a sixty-day period of public comment and published for comment, proposed amendments to Rule 3.29 of the West Virginia Rules of Lawyer Disciplinary Procedure as proposed by the Office of Disciplinary Counsel. The public comment period closed on August 18, 2014. The Court received no comments.

The Court has carefully considered the proposed amendments regarding the appointment of trustees, and does hereby approve the following amendments to Rule 3.29 of the Rules of Lawyer Disciplinary Procedure. The insertions are indicated by underscoring and deletions by strike-through as follows:

Rules of Lawyer Disciplinary Procedure.

“Rule 3.29. Appointment of counsel to protect clients’ interests. Appointment of Trustee.

(a) Appointment. ~~When a lawyer has disappeared, died, or has abandoned his or her law office or practice or has been suspended or disbarred and there is evidence that the lawyer has not complied with Rule 3.28, and no partner, executor, or other responsible party capable of conducting the lawyer’s affairs is known to exist, The Supreme Court of Appeals, upon written request by Disciplinary Counsel, may authorize the chief judge in the circuit in which the lawyer maintained his or her practice, to appoint a lawyer or lawyers to inventory the files of the disappeared, deceased, abandoning, suspended, or disbarred lawyer and to take such action as seems indicated to protect the interests of the lawyer and the lawyer’s clients. Any lawyer so appointed shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates, except as necessary to carry out the order of the court which appointed the lawyer to take such an inventory. serve as a trustee when there is evidence that:~~

(1) The lawyer is unable to properly discharge the lawyer's responsibilities to clients due to disability, disappearance or death, and no partner, executor, or other responsible party capable of conducting the lawyer's affairs is known to exist, or

(2) the lawyer failed to comply with Rule 3.28 after disbarment or suspension.

(b) **Notice of Appointment.** Notice of trustee's appointment shall be provided to the Office of Disciplinary Counsel by the appointing judge which shall monitor and assist the work of the trustee as necessary and appropriate.

(c) **Duties of Trustee.** The trustee shall take whatever action seems indicated to protect the interests of the lawyer, and the lawyer's clients and other affected parties, including, but not limited to the following:

(1) Inventory active files and make reasonable efforts to distribute them to clients;

(2) Inventory closed client files and make reasonable efforts to distribute them to former clients;

(3) Take possession of and review the lawyer trust and business accounts;

(4) Make reasonable efforts to distribute identified trust funds to clients or other parties (other than the lawyer);

(5) After obtaining an order of the circuit court, dispose of any remaining funds and assets as directed by the court; and

(6) Take any other action as seems necessary to protect the interests of the lawyer and the lawyer's clients.

(d) **Duties of Lawyer.** The lawyer, to the extent possible, shall cooperate and promptly respond to reasonable requests for information from the trustee.

(e) **Protection of Client Information.** Any lawyer so appointed shall not be permitted to disclose any information contained in any files so inventoried without the informed, written consent of the client to whom such file relates, except as necessary to carry out the order of the court which appointed the lawyer to take such an inventory and to comply with any request from an appropriate disciplinary authority. The trustee shall report professional misconduct on the part of the lawyer as required by Rule 8.3.

(f) **Reports to the Court.** The trustee shall file written reports with the Office of Disciplinary Counsel and the the appointing court judge:

(1) Within 120 days of appointment;

(2) Prior to being discharged if later than 120 days of appointment; and

(3) At such other times as directed by the appointing court.

The reports shall describe the nature and scope of the work accomplished and to be accomplished under this Rule 3.29 and the significant activities of the trustee in meeting the obligations under this Rule 3.29. The final report must include accountings for any trust and business accounts, the disposition of active and closed case files, and any requests for disposition of remaining files and property. The trustee may apply to the appointing court and/or Disciplinary Counsel for instructions whenever necessary to carry out or conclude the duties and obligations imposed by this Rule 3.29.

(g) **Immunity.** All trustees appointed pursuant to this Rule 3.29 shall be immune from liability for conduct in the performance of their official duties in accordance with Rule 3.29.

(h) **Legal Responsibility of Lawyer.** The lawyer for whom a trustee has been appointed or the estate of a deceased lawyer for whom a trustee has been appointed is liable to the trustee for all reasonable fees, costs, and expenses incurred by the trustee as approved by the appointing court. To the extent that the approved trustee's fees, costs, and expenses are paid by the disciplinary authority or other third party, the lawyer or the estate shall be liable to make reimbursement to the disciplinary authority or other third party for such payment.

(i) **Fees, Costs, and Expenses.** Application for allowance of fees, costs, and expenses shall be made by affidavit to the appointing court, which may enter a judgment in favor of the trustee and against the attorney or the estate of a deceased attorney for whom a trustee has been appointed. Notice of the application for fees, costs, and expenses shall also be made to the Office of Disciplinary Counsel, the lawyer or, if deceased, to the lawyer's personal representative, or heirs. For good cause shown, an interim application for fees, costs, and expenses may be made. As approved by the appointing court, the trustee shall be entitled to reimbursement from the lawyer or the deceased lawyer's estate for:

(1) Reasonable expenses incurred by the trustee for costs, including, but not limited to, clerical, paralegal, legal, accounting, telephone, postage, moving, and storage expenses, and

(2) Reasonable attorneys' fees.

In the absence of other funding sources, the Office of Disciplinary Counsel may pay the approved fees, costs, and expenses."

A True Copy

Attest: //s// Edythe N. Gaiser
Deputy Clerk, Supreme Court of Appeals

