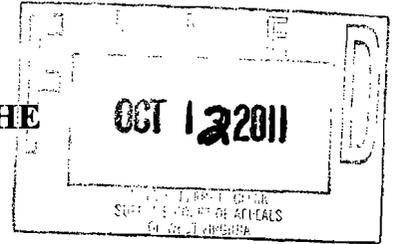


11-1402

IN THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA



OFFICE OF DISCIPLINARY COUNSEL,
Petitioner,

v.

Supreme Court No. 11-1402

KENNETH E. CHITTUM, a member of
The West Virginia State Bar

Respondent.

PETITION FOR RULE TO SHOW CAUSE

Now comes the petitioner, the Office of Disciplinary Counsel, by Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, and petitions this Court to issue a "Rule to Show Cause" why Respondent Kenneth E. Chittum should not be held in contempt of this Court's Order entered March 1, 2010. The Office of Disciplinary Counsel requests that Respondent's license to practice law be immediately suspended until such time that Respondent is in full compliance with this Honorable Court's Order.

In support of said petition, the Office of Disciplinary Counsel states the following:

1. On or about March 1, 2010, this Honorable Court issued an Order wherein the Court ordered provisions that included the following:

...(4) that the Respondent have a certified public accountant audit his office accounting records for two consecutive years, consistent with specifications set forth by the ODC...

[Attachment A].

2. On or about June 10, 2010, Respondent and his supervising attorney, R. Keith Flinchum, Esquire, signed an "Agreement with Supervising Lawyer and Respondent".
3. The Agreement stated that pursuant to this Honorable Court's order, Respondent was to hire a certified public accountant to audit his office's accounting records for a period of two years and provide quarterly reports to the Office of Disciplinary Counsel. Respondent was to provide verification that he had retained an accountant to perform the first quarterly report within sixty (60) days of the commencement of the supervised practice. The quarterly report of the audit was to set forth the source of all receipts by Respondent in his practice during the respective periods by the names of the client, the date of receipt, and date of deposit, if any, to either the office operating account or the office trust account. As to any funds deposited to Respondent's office operating account otherwise paid to Respondent, whether drawn from Respondent's trust account or not, the report of the Certified Public Accountant shall state whether there is supporting evidence available to establish the propriety of the payment of such funds to Respondent (a) for legitimate legal expenses incurred by Respondent on behalf of the client or (b) as earned fees properly due Respondent under the terms of Respondent's employment by the client, or (c) for neither such purpose, such transfer not being justified by any available evidence.

4. In the initial supervision report, dated June 8, 2010, Mr. Flinchum indicated to the Office of Disciplinary Counsel that Respondent had retained Jeffrey S. Hollifield, CPA, to assist him with the audit.
5. On or about November 12, 2010, Mr. Flinchum's Office contacted the Office of Disciplinary Counsel and advised that Respondent had suffered a myocardial infarction and had been hospitalized.
6. On or about December 21, 2010, Mr. Flinchum sent a letter to the Office of Disciplinary Counsel advising the status of Respondent's medical condition. Mr. Flinchum advised that it was expected that Respondent would be cleared to return to work after the beginning of the new year. [Attachment B - Filed Under Seal].
7. On or about February 2, 2011, the Office of Disciplinary Counsel sent Mr. Flinchum a letter indicating that Respondent's quarterly audit was past due and to provide the same immediately. [Attachment C].
8. On or about February 3, 2011, Mr. Flinchum faxed a letter to the Office of Disciplinary Counsel indicating that he was unaware the first quarterly audit report had not been performed and indicated that he would contact Respondent and Mr. Hollifield to determine the status of the same. [Attachment D - Filed Under Seal].
9. On or about March 22, 2011, Mr. Flinchum provided the Office of Disciplinary Counsel with a supervision report which stated Respondent had advised him that Mr. Hollifield would have "proper correspondence prepared for the Office of Disciplinary Counsel within the next two weeks." [Attachment E- Filed Under Seal].

10. After receiving no correspondence from either Respondent or Mr. Hollifield, on or about July 1, 2011, the Office of Disciplinary Counsel sent Mr. Flinchum a letter again requesting the quarterly audit report. [Attachment F].
11. On or about July 6, 2011, the Office of Disciplinary Counsel received a letter addressed to Respondent from Mr. Flinchum indicating the need to provide the quarterly audit report to the Office of Disciplinary Counsel. [Attachment G - Filed Under Seal].
12. To date, Respondent has not provided an audit of his office accounts to the Office of Disciplinary Counsel.

WHEREFORE, the Office of Disciplinary Counsel requests that this Court issue a Rule to Show Cause why Respondent should not be found in contempt and why the Office of Disciplinary Counsel should not be afforded the relief requested.

THE OFFICE OF DISCIPLINARY COUNSEL
By Counsel,

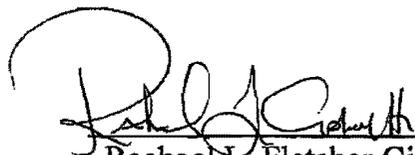


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304-558-4015 - Facsimile

CERTIFICATE OF SERVICE

This is to certify that I, **Rachael L. Fletcher Cipoletti**, Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 12th of October, served a true copy of the foregoing "**PETITION FOR RULE TO SHOW CAUSE**" upon David L. White, Esquire, counsel for Respondent Kenneth E. Chittum, by mailing the same via United States Mail, with sufficient postage, to the following address:

David L. White, Esquire
179 Summers Street, Suite 314
Charleston, West Virginia 25301



Rachael L. Fletcher Cipoletti