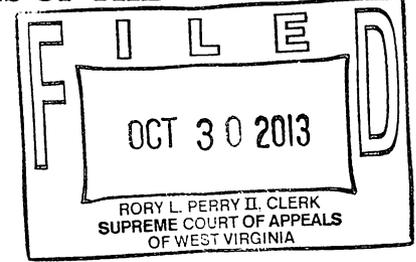


**BEFORE THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA**

**ARGUMENT
DOCKET**



LAWYER DISCIPLINARY BOARD,

Complainant,

v.

No. 12-0528

IRA M. HAUGHT,

Respondent.

REPLY BRIEF OF THE LAWYER DISCIPLINARY BOARD

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I. REPLY TO RESPONDENT'S BRIEF

This matter is before the Court pursuant to the “Report of the Hearing Panel Subcommittee” issued on June 6, 2013, wherein the Hearing Panel Subcommittee properly found that the evidence established that Respondent committed violations of Rules 1.15(a), 8.1(a), 8.4(b), 8.4(c) and 8.4(d) of the Rules of Professional Conduct. At this stage in the proceedings, this Court has held that “[t]he burden is on the attorney at law to show that the factual findings are not supported by reliable, probative, and substantial evidence on the whole adjudicatory record made before the Board.” Lawyer Disciplinary Board v. Cunningham, 195 W.Va. 27, 34, 464 S.E.2d 181, 189 (1995); Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 290, 452 S.E.2d 377, 381 (1994).

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Committee on Legal Ethics v. Keenan, 189 W.Va. 37, 40, 427 S.E.2d 471, 473 (1993) (*per curiam*); *quoting* Syl. Pt. 3, in part, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984). It cannot be said that Respondent’s conduct in this case conforms to the expectations of the profession as stated in the Rules of Professional Conduct. The evidence clearly establishes that Respondent acted in a manner wherein it was intentional and knowing and deviated from the standard of care that a reasonable lawyer, let alone one with Respondent’s considerable experience, would exercise in that situation.

- A. There was clear and convincing evidence that Respondent violated the Rules of Professional Conduct when he held the Blizards funds in a “separate account” without the consent of his clients and when he did not acknowledge the Wrights as his clients.**

While Respondent argues that his clients, the Blizards, asked him to maintain their funds in cash, there was no testimony from the Blizards to substantiate that. (TR. pp. 62-65;79-80). The Blizards testimony at the hearing was that they did not direct Respondent on how to keep the funds that they provided to Respondent and even Ms. Blizard believed that Respondent kept the money in an escrow account. (TR. pp. 62-65). From that testimony alone, Respondent converted the funds to his own personal use. Further, there was no consent by the Blizards to hold the funds in separate account and Respondent did not produce any documentation to show that the clients provided consent. The fact that the Blizards had no complaint about how Respondent handled their money does not excuse Respondent’s failure to follow Rule 1.15(a).

Respondent’s misconduct in failing to keep the Blizards’ funds in his IOLTA account is a criminal act, is dishonest, and was conduct that is prejudicial to the administration of justice in violation of Rules 8.4(b), 8.4(c), and 8.4(d). Further, Respondent’s explanation in his first response to the complaint, that the issues outlined in the complaint were resolved in a lawsuit, was false because the complaint clearly indicated that it involved issues with the certificate of deposit and the lawsuit did not involve the same. (ODC Ex. 1) Respondent then denied that he had cashed the Blizards’ check (ODC Ex. 10, p. 67), but when the check was shown to him which had his endorsement during his sworn statement, Respondent

continued to assert that the Blizards' brought cash to his office and the check was not deposited into his IOLTA account. (ODC Ex. 10, pp. 67-68, 77). A review of Respondent's IOLTA account clearly shows that the check was deposited into the account. (ODC Ex. 16, pp. 1053, 1056). Further, Respondent stated he returned the funds to the Blizards by cash but the IOLTA account shows it was returned by check. (ODC Ex. 10, p. 68). When confronted with the records at the hearing, Respondent changed his story yet again to conform to what the records reflected. (TR. pp. 184-188). Respondent's statements about the IOLTA account were false and material which is a violation of Rule 8.1(a).

As previously stated in Petitioner's brief, the Haught Family Trust was run through Respondent's IOLTA account and Respondent kept the Haught Family Trust money in his safe. (TR. pp. 189-190, 214, 238). There was no evidence ever produced by Respondent that the Blizards' funds were to be kept in cash and any holding of the money in cash with the Haught Family Trust money is an obvious conversion of the funds into personal use. Respondent was given an opportunity through discovery and then through an Order to provide the Haught Family Trust records to substantiate his claim that the Blizards' funds were held in cash. However, Respondent's response to the Order was that he did not have the documents. Respondent also makes an argument that the funds in the Haught Family Trust were large in amount and therefore, Respondent did not need to convert the Blizards funds into his own. Respondent never provided any proof that there were actually funds in the safe for the Haught Family Trust and said that there were no records regarding the Haught Family Trust. There is no evidence that the safe even existed. Respondent's ever

changing story regarding the funds can not be ignored. It is clear from a review of the IOLTA records that many checks were being written out for the Haught Family Trust.

Respondent's attempt hide the fact that he was the attorney for the Wrights again demonstrates Respondent's misconduct. The evidence reflected that the Wrights were the clients of Respondent. The Wrights contacted Respondent about a deed that Respondent had already prepared in another case and contacted Respondent several times throughout the matter about the deed. (TR. pp. 117, 127, 129-130). Respondent prepared a deed for the Wrights and when the Wrights later contacted Respondent about an issue with the deed, Respondent prepared a corrective deed. (TR. pp. 135-136, ODC Ex. 22, p. 1216). Respondent asserts that real estate closing practices reflect that the seller is responsible for deed preparation, but that is not the case in this situation. The Wrights contacted Respondent to prepare the deed. Respondent asserted in his response to the complaint that another individual contacted him to prepare the deed (ODC Ex. 19, p. 1192), but then he testified at the hearing that the Wrights contacted him to prepare the deed. (TR. p. 250). Further, Respondent indicated that the seller is usually responsible for deed preparation and transfer taxes. The Wrights paid the transfer taxes as stated in the July 26, 2006 letter from Respondent to the Wrights. (ODC Ex. 19, pp. 1192, 1195). All of the evidence from Respondent's own client file reflected that the Wrights were his clients. It is clear from the evidence that Respondent violated Rule 8.1(a) and 8.4(c) by falsely asserting that the Wrights were not his clients.

B. Respondent's testimony lacked credibility.

While it is understandable that Respondent is displeased with the Hearing Panel's accurate assessment that his testimony lacked credibility, the evidence was overwhelming that throughout the proceedings that Respondent was less than candid. Respondent's rendition of how the Blizards' funds went into his account changed multiple times over the course of the case from his response to his sworn statement to the hearing in the matter. Moreover, the evidence clearly contradicts Respondent's multiple version of how funds were to be held. Both Blizards testified that they did not instruct Respondent how to hold the funds. (TR. pp. 62-65, 79-80). Further, Respondent was unable to provide any records to reflect the cash withdrawal from the Haught Family Trust to ensure that he properly accounted for the funds. Regarding the Wright matter, Respondent's assertion that the Wrights were not his clients was not proven with the testimony or evidence. The Wrights contacted Respondent to prepare the deed and paid all expenses relating to the deed. The seller of the property had not contact with Respondent about any part of the deed. Again, the Hearing Panel Subcommittee properly concluded that Respondent's rendition of this event is not accurate and is not trustworthy. The Hearing Panel Subcommittee respectfully listened to the testimony and reviewed all of the evidence that clearly established that Respondent's credibility was lacking and the HPS was well within its right as the finder of fact to assess the same.

C. The weight given to aggravating and mitigating factors was appropriate.

The aggravating factors relied on by the Hearing Panel were Respondent's refusal to acknowledge the wrongful nature of his misconduct, his substantial experience in the practice of law, his failure to be truthful during the investigation and hearing, and his dishonest motive. The mitigating factors included the fact that Respondent had no prior discipline from the Supreme Court and that the Blizards did not suffer any financial loss. The Hearing Panel again, heard and reviewed all of the evidence in this matter. The Hearing Panel properly weighed and considered the evidence in reaching a recommendation for a three year suspension.

D. Disciplinary Counsel's citations to cases show the various rule violations and sanctions.

Unfortunately, there is not always a way to put every case in the same box as others. In this case, it is clear that Respondent failed to properly hold the funds of his client in his IOLTA account. Further, Respondent lied to ODC regarding how the funds were deposited and kept. Respondent also lied to ODC in regards to who was his client in the Wright matter. The West Virginia cases listed by Disciplinary Counsel in her brief reflect the various sanctions for the same rules which Respondent was found to have violated. *See, Lawyer Disciplinary Board v. Cavendish, 226 W.Va. 327, 700 S.E.2d 779 (2010); Lawyer Disciplinary Board v. Martin, 225 W.Va. 387, 693 S.E.2d 461 (2010); and Lawyer Disciplinary Board v. Swisher, 203 W.Va. 603, 509 S.E.2d 884 (1998).* While there was not a case on point with all of the same facts as presented in Respondent's case, there are

analogous cases. In Cavendish, the attorney was suspended for three years for submitting false vouchers to a third party for payment in violation of Rule 1.15 and Rule 8.4(c). The attorney co-mingled fees, converted them to his own use, and used false vouchers. That case is the closest to this case but again not completely similar. The other two West Virginia cases resulted in suspensions but not three year suspensions. Disciplinary Counsel also listed two out of state cases that reflected suspensions for similar rule violations. See, Matter of Kouros, 735 N.E.2d 202 (2000) (Indiana) and Matter of Grochowski, 701 A.2d 1013 (1997) (Rhode Island).

Respondent's failure to be truthful with Disciplinary Counsel during the investigation and hearing cannot be ignored. Respondent's evolving falsehoods and changing stories regarding the Blizzard funds is a clear indication of Respondent's violation of the Rules. Respondent knew that the Wrights were his clients and such was proven from the evidence. However, Respondent asserted that the Wrights were not his clients and asserted that seller, someone he rarely spoke to, was his client. Respondent's misconduct cannot be downplayed and also shows a clear indication that such conversion of funds and false representation to Disciplinary Counsel by attorneys will not be tolerated. The sanction in this matter is not only to sanction Respondent for his misconduct, but also to deter other members of the bar from committing similar misconduct. The Hearing Panel can rightfully look to determent in recommending a sanction. See Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987). Such multiple instances of misconduct are serious violations of an

attorney's duty to his profession. It was clear that the Hearing Panel believed that Respondent's misconduct was severe enough to support a suspension for three (3) years.

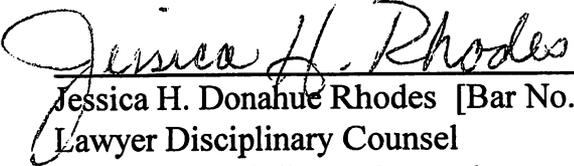
II. CONCLUSION

In reaching its recommendation as to sanctions, the Hearing Panel Subcommittee considered the evidence, the facts and recommended sanction, the aggravating factors and mitigating factors. For the reasons set forth above, the Hearing Panel Subcommittee recommended the following sanctions:

- A. That Respondent's law license be suspended for a period of three (3) years;
- B. Upon successful reinstatement to the practice of law, Respondent sign and follow a plan of supervised practice for a period of two (2) years with a supervising attorney, consistent with the specifications set forth by the ODC;
- C. Upon successful reinstatement to the practice of law, Respondent complete an additional nine (9) hours of CLE by during that CLE time period he is reinstated in the area of ethics and office management over and above that already required;
- D. Upon successful reinstatement to the practice of law, Respondent have a certified public accountant audit his office accounting records for two (2) consecutive years, consistent with the specifications set forth by the ODC; and
- E. Respondent be ordered to pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Accordingly, the Office of Disciplinary Counsel urges that this Honorable Court uphold the sanctions recommended by the Hearing Panel Subcommittee.

Respectfully submitted,
The Lawyer Disciplinary Board
By Counsel

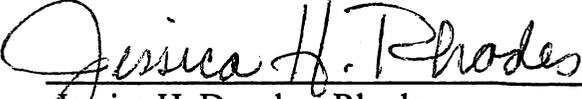


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CERTIFICATE OF SERVICE

This is to certify that I, Jessica H. Donahue Rhodes, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 30th day of October, 2013, served a true copy of the foregoing "**REPLY BRIEF OF THE LAWYER DISCIPLINARY BOARD**" upon Ancil G. Ramey, Esquire, counsel for Respondent Ira M. Haught, by mailing the same via United States Mail, both certified and regular, with sufficient postage, to the following address:

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Post Office Box 2195
Huntington, West Virginia 25722



Jessica H. Donahue Rhodes