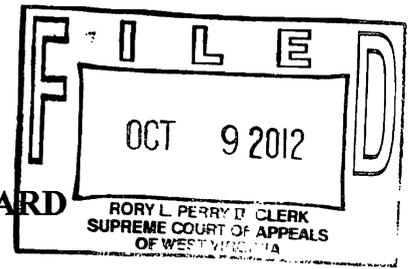


12-1172



**BEFORE THE LAWYER DISCIPLINARY BOARD  
STATE OF WEST VIRGINIA**

**In Re:** Benjamin F. White, a member of  
The West Virginia State Bar

**Bar No.:** 10062  
**I.D. No.:** 09-03-334

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**STATEMENT OF CHARGES**

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**To:** Benjamin F. White, Esquire  
338 Main Street  
Chapmanville, West Virginia 25508

**YOU ARE HEREBY** notified that a Hearing Panel Subcommittee of the Lawyer Disciplinary Board will hold a hearing pursuant to Rules 3.3 through 3.16 of the Rules of Disciplinary Procedure, upon the following charges against you:

1. Benjamin F. White (hereinafter "Respondent") is a lawyer practicing in Chapmanville, which is located in Logan County, West Virginia. Respondent was admitted to The West Virginia State Bar after successful passage of the bar exam on November 2, 2005, and, as such, is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

**Count I**  
**Complaint of the Office of Disciplinary Counsel**  
**I.D. No. 09-03-334**

2. Respondent was employed with Hendrickson and Long, PLLC (hereinafter referred to as "Firm"), from April 2008, to May 2009. Pursuant to an oral agreement between the Firm and Respondent, it was agreed that the Firm would pay Respondent a base salary of Eighty Thousand Dollars (\$80,000.00) per year and extend him an Eighty Thousand Dollar (\$80,000.00) line of credit to be used at his discretion. Respondent signed a note to repay the line of credit. Respondent was also permitted to participate in the Firm's bonus pool.
3. In return, Respondent agreed to turn over all attorney fees he received from the Social Security Administration resulting from successfully representing clients on matters unrelated to his Social Security disability claims filed against the Administration. He also agreed that any legal fees he earned in representing clients on matters unrelated to his Social Security disability claims practice would be paid directly to the Firm.
4. Respondent agreed that he would have no personal financial interest in any portion of these fees or the fees he was paid by the Social Security Administration.
5. Respondent advised the Firm that revenue associated with Social Security claims would trail the intake of new clients by approximately twelve (12) to eighteen (18) months.

6. Shortly after Respondent commenced employment, it was requested that he advise the Social Security Administration that Respondent had joined the Firm and that all checks issued should be made payable to them.
7. Respondent advised that the Social Security Administration would only issue checks to the responsible attorney and that the checks could not be made payable to a law firm. Respondent assured the Firm that he would promptly remit any fee checks issued by the Administration to the Firm.
8. The promissory note was executed on or about September 30, 2008.
9. In December 2008, the Firm decided to move its practice and lawyers to Eckert Seamans Cherin and Mellott, LLC (hereinafter "Eckert Seamans") law firm, effective January 1, 2009.
10. All Firm employees were informed of that decision in December 2008. Most of the employees joined Eckert Seamans as of January 1, 2009, although the Hendrickson and Long, PLLC firm continued in existence after that date and remained in existence at the time of filing the complaint at the Office of Disciplinary Counsel.
11. In January 2009, Respondent agreed that he would be kept on the Firm's payroll with Eckert Seamans separately reimbursing his expenses until Eckert Seamans decided whether Respondent would be invited to join the Eckers Seamans firm.

12. On or about April 15, 2009, Respondent was informed that Eckert Seamans decided not to employ him and that his employment with the Firm would be terminated. The termination occurred on May 15, 2009.
13. At the time of Respondent's termination, it was noted by the Firm that no payments had been made to the Firm by Respondent for fees earned by him for his Social Security disability claims for many months. A meeting was arranged between the Firm and Respondent to discuss the same.
14. Respondent met with the Firm on May 20, 2009. Respondent was asked why Social Security Fee award checks had not been endorsed over to the Firm for the past several months.
15. At that meeting, Respondent claimed that as of December 31, 2008, he was no longer an employee of the Firm.
16. Respondent was asked to sign Social Security Administration Form SSA-3288 which would have authorized the Social Security Administration to provide the firm with a listing of each of Respondent's clients and the amount of any fees paid to Respondent by the Social Security Administration for work performed by Respondent with regard to each of those clients. Respondent refused to sign the same.
17. On or about May 21, 2009, Richard L. Fisher, the Firm's administrator, sent Respondent a letter again confirming Respondent's termination and again expressed concern that client fees received by Respondent had apparently not been turned over.

Respondent was directed to provide a written accounting of all legal fees received by him during his employment with the firm and any fees later received by him for work done before May 15, 2009. The SSA-3288 form was also enclosed for his signature and return.

18. On May 27, 2009, Respondent met with Mr. Fisher. At the meeting, Mr. Fisher provided a check from the Social Security Administration made out to Respondent and asked him to endorse the same. Respondent asked to see the check and inquired as to how the Firm intended to handle receipt of such checks in the future. Mr. Fisher advised Respondent that the checks represented payments for work performed as a firm attorney which he had agreed to endorse over to the firm as an employee of the Firm. Respondent then allegedly endorsed the check and returned it to Mr. Fisher.
19. After receiving no response to the May 21, 2009 letter, on or about June 11, 2009, Mr. Fisher sent Respondent another letter again asking for an accounting of fees and the endorsement of the SSA-3288 form.
20. Respondent did not respond to the June 11, 2009 letter and the matter was reported to the Office of Disciplinary Counsel by the Firm on or about June 29, 2009.
21. A complaint was opened and docketed for investigation by the Office of Disciplinary Counsel on or about July 15, 2009.
22. Respondent filed a verified response to the complaint on or about August 18, 2009.

23. Respondent maintained in his verified response that when he accepted the job at the Firm he was to be paid a salary of Eighty Thousand Dollars (\$80,000.00) per year and provided a loan of an additional Eighty Thousand Dollars (\$80,000.00) which was to be reduced by bonuses and/or a split of fees generated from his social security practice and the balance would not become due until May of 2011. Respondent further stated that no agreement was reached with respect to the existing and continuing clients who had ongoing claims with SSA from his prior law firm.
24. Respondent stated that he advised Mr. Hendrickson and Mr. Fisher at the May 20, 2009 meeting that he attempted to explain that the SSA Form-3288 would not provide the Firm with the information they sought with respect to the fees.
25. Respondent stated that Mr. Hendrickson gave him a list of several clients and a copy of several checks made out to Respondent. Respondent stated that he advised Mr. Hendrickson that he was in possession of all but one of the checks listed and that he had additional checks from other clients.
26. Respondent stated that he offered to deposit the same into an escrow account until the matter between him and the Firm was settled. Respondent stated that Mr. Hendrickson refused as he believed all of these funds and additional funds belonged to the Firm.
27. On or about October 30, 2009, the Firm filed a civil suit against Respondent in the Circuit Court of Kanawha County, West Virginia, alleging Breach of Duty Arising

from At-Will Employment; Conversion; Fraud and/or Misrepresentation; and Breach of Fiduciary Duty. The Firm claimed that Respondent intentionally and systematically failed to relinquish all the fees received from SSA, but instead kept them for his own personal use. The complaint requested special damages for economic and financial losses; a prejudgment of interest; an order freezing Respondent's assets; an accounting of Respondent's assets; and attorney's fees.

28. On or about August 11, 2010, the Firm filed an Amended Complaint and added an additional count alleging Default on Line of Credit Promissory Note.
29. On or about December 10, 2010, the Firm filed a Motion for Summary Judgment with respect to past due Eighty Thousand Dollar (\$80,000.00) promissory note issued by the Firm to Respondent.
30. Respondent filed a response to the same on or about March 11, 2011.
31. Mediation was conducted on April 8, 2011, and a settlement agreement was reached between Respondent and the Firm.
32. According to Respondent, the terms of the settlement agreement were:
  - a. Respondent will pay Five Thousand Dollars (\$5,000.00) on April 8, 2011;
  - b. Respondent will go to SSA with the Firm on April 8, 2011, and will thereafter cooperate with re-issuance, assignment and/or other provisions as may be necessary to transfer for all rights for checks previously issued in the amounts

of Sixteen Thousand, Three Hundred and Eight Dollars and Twenty-Five Cents for the following clients:

- i. W.A. in the amount of \$5,105.25;
  - ii. N.C. in the amount of \$5,917.00;
  - iii. L.G. in the amount of \$1,462.00; and
  - iv. R.T. in the amount of \$3,824.50.
- c. Respondent will pay an additional Ten Thousand Dollars within 120 days.
  - d. Following final payment the parties will execute mutual releases and all claims and jointly move the Court for dismissal with prejudice. Said releases are not limited to just claims already plead, but any and all claims by either party save only issues relating to advertising and an 800 number.
33. On or about April 25, 2012, the Firm filed "Plaintiff's Motion for Entry of Judgment for the Breach of Settlement Agreement." The Motion alleged that Respondent had been repeatedly requested by the Firm to pay the Firm Five Thousand, One Hundred Five Dollars and Twenty-Five Cents (\$5,105.25), which represented the attorney's fees for the representation of W. A.
34. This W.A. payment was an agreed upon term of the settlement agreement which Respondent advised Disciplinary Counsel by letter dated January 18, 2012, had been complied with on or about July 22, 2011.

35. The Motion referenced a status hearing held on or about October 13, 2011, to address the delay of the payment, as it was seven (7) months since the agreement was reached. At this hearing, Respondent indicated that he would tend to the issuance of the check for the fee with the Social Security Administration. Respondent and counsel for the Firm, J. Miles Morgan, Esquire, subsequently went to the Social Security Administration's Office. It was agreed that once the check was issued to Respondent, he would then turn the same over to the Firm. The Firm alleged in its Motion that this was never done and that Respondent would not respond to their repeated requests for the status of the same.
36. On or about June 25, 2012, an Order was entered Granting the Firm's Motion and found that Respondent was "in material breach of the Settlement Agreement" and entered a judgment jointly and severally against Respondent and his law firm in the amount of Five Thousand, One Hundred and Five Dollars and Twenty-Five Cents (\$5,105.25).
37. On or about July 23, 2012, a Writ of Execution was filed and a Suggestion was executed by the Clerk of Court of Kanawha County, West Virginia.
38. An Answer of the Suggestee, Logan Bank & Trust Company was filed July 26, 2012.
39. An Order for Payment by Person Suggested was entered by the Court on or about August 22, 2012.

40. Because Respondent knowingly failed to promptly advise his Firm of the receipt of funds from the SSA; failed to turn over funds in an unknown amount<sup>1</sup> that rightfully belonged to his Firm; and/or failed to properly keep the same until the dispute between Respondent and the Firm had been resolved, and instead converted the same to his own personal use, Respondent has violated Rule 1.15(a); 1.15(b); 1.15(c) and 8.4(c) and 8.4(d) of the Rules of Professional Conduct which provides as follows:

**Rule 1.15. Safekeeping property.**

(a) A lawyer shall hold property of . . . third persons that is in a lawyer's possession in connection with a representation separate from the lawyers own property. . . .

(b) Upon receiving funds or other property in which a . . . third person has an interest, a lawyer shall promptly notify the . . . third party. . . .

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

**Rule 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice.

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<sup>1</sup>Because the Firm was not the attorney of record listed with SSA, it is unknown to the Firm (and to ODC) the amount of client checks that were issued to Respondent above and beyond the checks that the Firm confronted Respondent with at the May 2009 meeting.

41. Because Respondent failed to honor the agreed upon terms of the settlement agreement, which was confirmed by the Court, despite his representations to the Court, Respondent has also violated Rule 3.4(c) of the Rules of Professional Conduct, which provides as follows:

**Rule 3.4 Fairness to Opposing Party and Counsel**

A lawyer shall not:

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

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Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a violation of the Rules of Professional Conduct and has issued this Statement of Charges. As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 30 days of service of this Statement of Charges by the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

**STATEMENT OF CHARGES ORDERED** on the 15<sup>th</sup> day of September 2012, and  
**ISSUED** this 24 day of September, 2012.



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**Charles J. Kaiser, Jr., Chairperson**  
Investigative Panel  
Lawyer Disciplinary Board