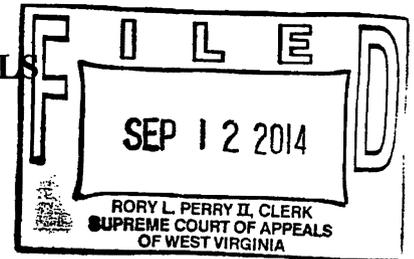


BEFORE THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA



STATE OF WEST VIRGINIA *ex rel.*
OFFICE OF DISCIPLINARY COUNSEL,
Petitioner,

v.

Supreme Court No. 14-1809

DONNA M. PRICE, a member
of the West Virginia State Bar,
Respondent.

PETITION FOR A RULE TO SHOW CAUSE AS TO WHY
RESPONDENT SHOULD NOT BE HELD IN CONTEMPT

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I. QUESTION PRESENTED

Whether an attorney who was sanctioned by this Honorable Court for several violations of the West Virginia Rules of Professional Conduct should be held in contempt and suspended for her failure to be in compliance with this Honorable Court's Orders?

II. STATEMENT OF THE CASE

In September of 2011, the Investigative Panel of the Lawyer Disciplinary Board charged Respondent for failing to timely prepare orders in her first Statement of Charges. Appendix p. 1-59, Exhibit 1. A second Statement of Charges was subsequently issued by the Investigative Panel of the Lawyer Disciplinary Board in May of 2013 charging Respondent with failure to respond to Disciplinary Counsel and other misconduct. Appendix p. 60-65, Exhibit 2.

As a result of the misconduct in violation of Rules 1.1 and 1.3 of the West Virginia Rules of Professional Conduct, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board recommended to this Court that Respondent be reprimanded along with other sanctions for her actions. Appendix p. 66- 162, Ex. 3. On or about March 25, 2014, in Lawyer Disciplinary Board v. Donna M. Price, No. 11-1345 (WV 3/25/14) this Court “concur[red] with the recommendation and . . . approve[d] the recommendation of the Hearing Panel Subcommittee in its entirety.” Appendix p. 163-164, Ex. 4. Specifically, this Court ordered that:

(1) respondent be, and she hereby is, **reprimanded** for her conduct in this matter; (2) respondent shall follow a written and executed plan of supervised practice for a period of three years with a supervising attorney of respondent's choice who is approved by the Office of Disciplinary Counsel; (3) during the three years supervision period, respondent shall complete 9 additional hours of continuing legal education per year, for a total of 27 additional hours, to include the following areas: ethics and office management, civil or criminal procedure, and the substantive areas in which respondent practices law; and (4) respondent shall pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure."

Id. On or about April 7, 2014, the Certificate of Costs in the amount of \$17,462.18 was filed with the Supreme Court of Appeals of West Virginia, and a copy thereof was provided to Respondent and Respondent's co-counsel, George R. Triplett, Esquire, and Jefferson L. Triplett, Esquire. Appendix p. 165-168, Exhibit 5. By letter dated April 8, 2014, Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, wrote to Respondent's counsel and provided them with a draft of a "Agreement with Supervising Lawyer and Respondent" and asked that Respondent nominate a supervisor in her geographical region. Appendix p. 169, Exhibit 6. Mrs. Fletcher Cipoletti also addressed the issues (1) that Respondent must provide verification of compliance with the Continuing Legal Education mandate on a yearly basis; and (2) that costs in the amount of \$17,562.18 must be paid within one year. Id. Respondent did not respond to this letter. By letter dated May 7, 2014, Mrs. Fletcher Cipoletti again wrote to Respondent's counsel asking for a response to her April 8, 2014 letter. Appendix p. 170, Exhibit 7.

As a result of the misconduct in violation of Rule 8.1(b) in the second Statement of Charges, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board recommended to this Court that Respondent be disciplined for her actions. Appendix p. 171-201, Exhibit 8. On or about May 27, 2014, in Lawyer Disciplinary Board v. Donna M. Price, No. 13-0478 (WV 5/27/14), this Court “concur[red] with the recommendation and . . . approve[d] the recommendation of the Hearing Panel Subcommittee.” Appendix p. 202-203, Ex. 9. Specifically, this Court ordered that:

(1) the Respondent be, and she hereby is, reprimanded for her conduct in this matter; (2) the respondent shall follow a supervised practice plan, with specifications set forth by the Office of Disciplinary Counsel with a supervising attorney agreed upon by the respondent and the Office of Disciplinary Counsel, for a three year period to run concurrent with the supervised practice ordered in Lawyer Disciplinary Board v. Donna Price, No. 11-1345; (3) during the same three-year period of supervised practice respondent shall complete an additional nine hours per year of continuing legal education in ethics and/or office management, civil and criminal procedure, or any other substantive areas in which she intends to practice law, for a total of twenty-seven hours over the three-year period, in addition to the hours she will already be required to complete; and (4) respondent shall pay for one-half of the costs of this disciplinary pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Id. On or about June 3, 2014, the Certificate of Costs in the amount of \$747.95 was filed with the Supreme Court of Appeals of West Virginia, and a copy thereof was provided to Respondent.¹ Appendix p. 204-206, Exhibit 10.

¹ Respondent did not have counsel for the second proceeding.

By letter dated June 26, 2014, George R. Triplett, Esquire, advised Mrs. Fletcher Cipoletti that Respondent would be communicating directly with the Office of Disciplinary Counsel and gave permission for Disciplinary Counsel to communicate directly with Respondent. Appendix p. 207, Exhibit 11. By letter dated July 7, 2014, Mrs. Fletcher Cipoletti wrote to Respondent concerning her compliance with the Court's Order. She provided Respondent with a draft of the "Agreement with Supervising Lawyer and Respondent" and asked that she nominate a supervisor. Mrs. Fletcher Cipoletti reminded Respondent of the CLE requirement and offered her a twelve (12) month payment plan to address payment of costs. Appendix p. 208-212, Exhibit 12. Respondent did not respond to this letter.

By letter dated August 19, 2014, sent via certified and regular U.S. Mail, Jessica H. Donahue Rhodes, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, wrote to Respondent and addressed Respondent's failure to comply with the Court's Order of March 25, 2014. Appendix p. 213, Exhibit 13. Mrs. Rhodes asked that Respondent provide a response to her letter on or before September 3, 2014, and advised her that her failure to respond would result in a request for a Rule to Show Cause. Id. The certified letter was signed for on August 21, 2014, by Cheryl L. McCullough. Appendix p. 214, Exhibit 13. However, Respondent did not provide a response to this letter. As of September 12, 2014, Respondent has not made any effort whatsoever to comply with the provisions set forth in the Supreme Court's Orders of March 25, 2014, and May 27, 2014.

III. SUMMARY OF ARGUMENT

Respondent has failed to comply with two (2) Orders of this Honorable Court and has failed to respond to Disciplinary Counsel's attempts to address the issue. Respondent should be held in contempt and suspended until she fully complies with this Court's Orders.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Office of Disciplinary Counsel does not object to oral argument in this matter. However, the issues raised do not address any new issues of law that would require oral argument pursuant to Rule 20 of the Rules of Appellate Procedure.

V. ARGUMENT

A. STANDARD OF REVIEW

The Supreme Court is the final arbiter of formal legal ethic charges and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys' licenses to practice law. Syl. Pt. 3, Committee on Legal Ethics v. Blair, 174 W.Va. 494, 327 S.E.2d 671 (1984); Syl. Pt. 7, Committee on Legal Ethics v. Karl, 192 W.Va. 23, 449 S.E.2d 277 (1994). In addition, discipline must serve as both instruction on the standards for ethical conduct and as a deterrent against similar misconduct to other attorneys. In Syllabus Point 3 of Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987), the Court stated:

In deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession.

Further, “[t]his Court views compliance with its orders relating to the practice of law to be among a lawyer’s highest professional responsibilities[.]” Committee of Legal Ethics of the West Virginia Bar v. Farber, 191 W.Va. 667, 669, 447 S.E.2d 602, 604 (1994). Thus, “[w]hen this Court acts within its jurisdiction, its orders shall be promptly obeyed, or contempt is a proper sanction.” Syllabus point 1, United Mine Workers of America v. Faerber, 179 W.Va. 73, 365 S.E.2d 353 (1986). “This Court possesses the power to punish a party for contempt of an order executed by this Court.” Syllabus point 4, State ex rel. Walker v. Giardina, 170 W.Va. 483, 294 S.E.2d 900 (1982).

B. RESPONDENT HAS FAILED TO COMPLY WITH THIS COURT’S ORDERS

Respondent has known since March of 2014 that this Court accepted the recommendation of the Hearing Panel Subcommittees and ordered her to be disciplined along with several additional sanctions, including but not limited to practicing under supervision and paying the costs of the disciplinary proceedings. Respondent has failed to follow this Court’s Orders and has failed to respond to Disciplinary Counsel’s letters which were an attempt to assist Respondent to be in compliance with this Court’s Orders.

This Court has previously suspended an attorney for failure to comply with this Court’s orders after receiving a reprimand. Office of Disciplinary Counsel v. Michael F.

Niggemyer, 221 W.Va. 59, 650 S.E.2d 158 (2007). This Court stated that “[a] lawyer’s failure to comply with an order of this Court is a serious breach of his/her professional responsibility.” Id. at 65, 164. The attorney in that case failed to pay costs of the disciplinary matter along with failure to employ a certified public accountant and failure to provided the Office of Disciplinary Counsel with itemized account of all receipts of client funds. This Court “immediately and indefinitely suspended the attorney’s license to practice law in this State until such time as he has demonstrated full compliance with said orders and our opinion herein.” Id. The Court also noted that the previous orders in that attorney’s case remained in “full force and effect.” Id.

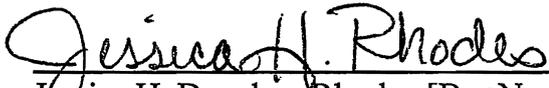
Respondent’s failure to comply with Orders of this Court is the same situation as was brought up in Niggemyer. Respondent has failed to make any attempt to pay the costs of the disciplinary proceedings and failed to enter into a supervision agreement. Respondent should be found in contempt, and suspended immediately and indefinitely until she has demonstrated full compliance with this Court’s Orders. Further, the Court’s Orders on March 25, 2014, and May 27, 2014, should remain in “full force and effect.”

VI. CONCLUSION

Petitioner has shown that Respondent has failed to comply with this Court’s Orders dated March 25, 2014, and May 27, 2014. As such, the Office of Disciplinary Counsel respectfully requests that this Honorable Court issue a Rule to Show Cause as to why Respondent should not be found in contempt of this Honorable Court’s Orders and why

Respondent should not be suspended immediately and indefinitely until she has demonstrated full compliance with this Court's Orders.

THE OFFICE OF DISCIPLINARY COUNSEL
By Counsel,

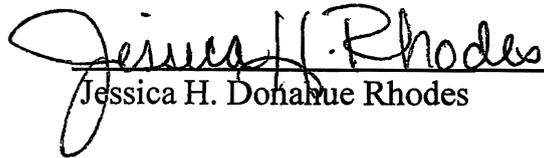


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CERTIFICATE OF SERVICE

This is to certify that I, **Jessica H. Donahue Rhodes**, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this the 12th day of September, 2014, served a true copy of the foregoing "**PETITION FOR A RULE TO SHOW CAUSE AS TO WHY RESPONDENT SHOULD NOT BE HELD IN CONTEMPT**", and "**APPENDIX**" attached hereto, upon Respondent Donna M. Price by mailing the same via United States Mail, with sufficient postage, to the following address:

Donna M. Price, Esquire
Post Office Box 146
Marlinton, West Virginia 24954



Jessica H. Donahue Rhodes