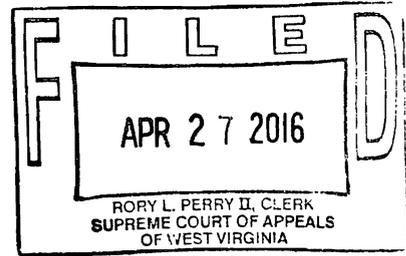


**IN THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA**

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

Petitioner,



v.

Supreme Court No. 16- _____

**BENJAMIN F. WHITE, 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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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
I. QUESTION PRESENTED	1
II. STATEMENT OF THE CASE	1
III. SUMMARY OF ARGUMENT	3
IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION	3
V. ARGUMENT	3
A. STANDARD OF REVIEW	3
B. RESPONDENT HAS FAILED TO COMPLY WITH THIS COURT'S ORDER	4
VI. CONCLUSION	5

TABLE OF AUTHORITIES

Cases:

<u>Committee on Legal Ethics v. Blair</u>	
174 W.Va. 494, 327 S.E.2d 671 (1984)	3
 <u>Committee on Legal Ethics v. Farber</u>	
191 W.Va. 667, 669,447 S.E.2d 602, 604 (1994)	4
 <u>Committee on Legal Ethics v. Karl</u>	
192 W.Va. 23, 449 S.E.2d 277 (1994)	3
 <u>Committee on Legal Ethics v. Walker</u>	
178 W.Va. 150, 358 S.E.2d 234 (1987)	4
 <u>Lawyer Disciplinary Board v. White</u>	
234 W.Va. 167,764 S.E.2d 327 (2014)	2
 <u>Office of Disciplinary Counsel v. Karen E. Acord</u>	
2013 WL 4860849 (W.Va. Sup. Ct. No. 13-0545, Sept. 13, 2013)	5
 <u>Office of Disciplinary Counsel v. Michael F. Niggemyer</u>	
221 W.Va. 59, 650 S.E.2d 158 (2007)	4
 <u>State of West Virginia ex rel. Office of Disciplinary Counsel v. Donna Price</u>	
2015 WL 570139 (W.Va. Sup. Ct. No. 14-0899, February 10, 2015)	5
 <u>State ex rel. Walker v. Giardina</u>	
170 W.Va. 483, 294 S.E.2d 900 (1982)	4
 <u>United Mine Workers of America v. Faerber</u>	
179 W.Va. 73, 365 S.E.2d 353 (1986)	4

West Virginia Statutes and Rules:

R. of Appellate Proc.	Rule 24	2
R. of Appellate Proc.	Rule 20	3
R. Professional Conduct	Rule 1.15(a)	1

R. Professional Conduct	Rule 1.15(b)	1,2
R. Professional Conduct	Rule 1.15(c)	1,2
R. Professional Conduct	Rule 8.4(c)	1
R. Professional Conduct	Rule 8.4(d)	3

I. QUESTION PRESENTED

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

II. STATEMENT OF THE CASE

In October of 2012, the Office of Disciplinary Counsel ("ODC") filed formal charges against Respondent alleging violations of six different Rules of Professional Conduct. Appendix p. 1. The ODC charged that Respondent failed to turn over social security disability fee checks that belonged to his employer and failed to keep these checks separate until the dispute with his employer had been resolved, in violation of Rules 1.15(a), (b) and (c). The ODC also charged Respondent with violating Rules 8.4(c) and (d) by converting property that belonged to his firm, thereby engaging in conduct that was prejudicial to the administration of justice involving dishonesty, fraud, deceit, or misrepresentation.

A Hearing Panel Subcommittee of the Lawyer Disciplinary Board heard the matter in May of 2013. It found that Respondent had violated Rules 1.15(b) and (c) when he withheld and subsequently cashed some of the fee checks. However, the Hearing Panel Subcommittee did not find that Respondent had violated Rule 1.15(a) due to the fees being subject to a bona fide business dispute. Likewise, the Hearing Panel Subcommittee determined that Respondent did not violate Rules 8.4(c) or (d) because he had not affirmatively misrepresented his receipt of the funds or convert the fees. The Hearing Panel Subcommittee recommended that this Court reprimand Respondent, order Respondent to take an additional six hours of Continuing Legal Education with a focus on law office management and ethics, and require him to pay the costs of the disciplinary

proceeding. Appendix p. 12. On or about September 30, 2014, this Court filed an Opinion wherein the Court concluded that the findings of the Hearing Panel Subcommittee that Respondent had violated Rules 1.15(b) and (c) of the Rules of Professional Conduct were supported by the record, and adopted the recommended sanctions. Lawyer Disciplinary Board v. White, 234 W.Va. 167, 764 S.E.2d 327 (2014). Appendix p. 51.

On or about October 22, 2014, pursuant to Rule 24 of the Rules of Appellate Procedure, the ODC filed its Certificate of Expenses with this Court, and mailed a copy thereof (with the documentation) to Respondent that same date. This pleading certified that the ordinary and reasonable expenditures incurred by the ODC and the Lawyer Disciplinary Board in the investigation and litigation of the disciplinary matter involving Respondent totaled \$3,457.73. Appendix p. 69. Thereafter, on or about October 30, 2014, this Honorable Court issued a Mandate wherein the Court ordered provisions that included the following:

...(3) the respondent is hereby ordered to reimburse the Office of Disciplinary Counsel for the costs of this action in the amount of \$3,457.73. [Appendix p. 72.]

On or about January 16, 2015, Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, sent a letter to Respondent advising him to contact the office if he wished to establish a payment plan regarding the costs owed. Appendix p. 73. Shortly thereafter, Respondent telephoned the ODC and indicated that he would begin making payments on his costs. The ODC, however, did not receive any payment from Respondent. Ms. Cipoletti had another conversation with Respondent via telephone in late Spring/early Summer of 2015, and again reminded him of his financial obligations. Subsequently, in early 2016, Respondent informed the ODC that he was expecting to receive some funds that he would use to pay his costs. After receiving no payment from Respondent,

the Chief Lawyer Disciplinary Counsel sent a letter to Respondent, dated March 9, 2016, reminding him of his financial obligations pursuant to the Court's Mandate. Appendix p. 74. As of the date of this filing, no payment has ever been received by the ODC from Respondent. The ODC also has also never received any documentation from Respondent regarding the additional six hours of Continuing Legal Education with a focus on law office management and ethics the Court ordered that he complete.

III. SUMMARY OF ARGUMENT

Respondent has failed to comply with the order of this Honorable Court of October 30, 2014, and this Court should immediately suspend Respondent's license to practice law as a result of such contemptuous conduct until such time he can demonstrate full compliance with this Court's order.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The ODC 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 ethics 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 on 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.” Syl. Pt. 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.” Syl. Pt. 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 ORDER

Respondent has clearly failed to follow the order contained in the October 30, 2014 Mandate of this Court and has failed to act in response to the ODC’s attempts to assist with Respondent’s compliance with this Court’s order. Approximately eighteen months have passed since Respondent was ordered to pay the costs of his disciplinary proceeding and Respondent has never made any payment. Respondent is clearly in contempt of the order of this Court and has demonstrated no proof as to why he is unable to comply with such.

This Court has previously issued suspensions for failure to comply with the orders of the Court after receiving a reprimand in disciplinary matters. In 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 respondent attorney in that case failed to pay costs of his disciplinary matter along with the failure to employ a certified public accountant and failure to provide the ODC 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. *See also, State of West Virginia ex rel. Office of Disciplinary Counsel v. Donna Price*, 2015 WL 570139 (W.Va. Sup. Ct. No. 14-0899, February 10, 2015) (memorandum decision); Office of Disciplinary Counsel v. Karen E. Acord, 2013 WL 4860849 (W.Va. Sup. Ct. No. 13-0545, Sept. 13, 2013) (memorandum decision).

VI. CONCLUSION

Based on the foregoing, 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 and why Respondent should not be suspended immediately and indefinitely until he has demonstrated full compliance with the order of this Court entered on October 30, 2014, which remains in full force and effect.

THE OFFICE OF DISCIPLINARY COUNSEL
By Counsel,



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CERTIFICATE OF SERVICE

This is to certify that I, **Renée N. Frymyer**, Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this the 27th day of April, 2016, 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 Benjamin F. White, Esquire by mailing the same via United States Mail, with sufficient postage, to the following address:

Benjamin F. White, Esquire
338 Main Street
Chapmanville, WV 25508



Renée N. Frymyer