

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

**STATE OF WEST VIRGINIA ex rel.
Office of Disciplinary Counsel
Petitioner,**

VS.

SUPREME COURT # 16-0411

**Benjamin F. White
Respondent.**

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

Benjamin F. White
Respondent
338 Main Street
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304.395.0000
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RESPONDENT'S RESPONSE TO SHOW CAUSE

COMES NOW the Respondent, and provides the required response to the Office of Disciplinary Counsels Question that respondent should be held in contempt and suspended for respondent's noncompliance with this Honorable Court.

I. STATEMENT OF THE CASE

Respondent agrees with the first four paragraphs contained in Petitioners Statement of the Case. But, Respondent immediately complied with the six hour ethics CLE requirement. Respondent avers that he did timely comply with the additional CLE requirement by attending and earning the required six additional hours by attending two WVCLE's in Morgantown, WV almost immediately after receiving this Honorable Courts Order requiring such. Specifically, respondent attended the following two CLE's;

1. **10-04-14:** respondent attended WVCLE titled *UPDATE ON THE LAW*, and completed **3 credits in ethics**, and

2. **11-20-14:** respondent attended WVCLE titled *The New Amendments to the WV Rules of Professional Conduct*, and completed **3 credits in ethics**.

However, Ms. Frymyer is correct that respondent did not provide ODC with Documentation of the six hours of Continuing Legal Education with a focus on law office management and ethics. Counsel did not realize, nor instructed, that that documentation need to be sent separately to the ODC as stated in its Statement of the Case. Those credits are reflected on respondents current CLE Transcriptⁱ and respondent interacted with Ms. Cipoletti at the WVCLE as she presented the update. Thus, respondent did comply with this Honorable Court's Order in taking the additional six hours of Continuing Legal Education with a focus on law office management and ethics, and did so within weeks of this Honorable Courts Order to do so.

II. SUMMARY OF ARGUMENT

Respondent has not failed to comply with this Honorable Court's Order of October 30, 2014, and this Court should not immediately suspend Respondent's license to practice law as Respondent has substantially complied with this Honorable Court's Order.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondent agrees with Petitioner's statements contained in its Petition regarding Oral Argument.

IV. ARGUMENT

Respondent has not failed to comply with this Honorable Court's Order dated September 30, 2014. As discussed *supra*, Respondent immediately and within weeks of the Court's Order fully complied with the CLE requirement of taking an additional six hours of Continuing Legal

Education with a focus on law office management and ethics. This is evidenced on Respondents attached CLE transcript. By doing so, Respondent has demonstrated obedience to this Honorable Court and promptly complied with the CLE requirement.

In regards to reimburse the Office of Disciplinary Counsel for the cost of the action in the amount of \$3,457.73, respondent has not had the ability to pay for circumstances beyond respondent's control. Respondent acknowledges his duty to pay and fully intends to reimburse the ODC in full.

Notably, there was never a date certain to reimburse the ODC in any documentation or communication from the ODC or in the Order to reimburse the ODC. Therefore, Respondent should not be held in contempt for not yet reimbursing the ODC's cost of litigation.

Moreover, the complaint against your respondent was filed against respondent, by David Hendrickson, on **June 29, 2009** and the ODC opened and docketed for investigation the complaint on **July 15, 2009**. But, at the request of David Hendrickson the ODC waited until October 12, 2012ⁱⁱ to file charges against the respondent herein. Clearly, ODC waited more than three (3) years, specifically **40 months**, after the complaint was reported to the ODC before it filed the charges against respondent. Then once the ODC initiated the charges, the final disposition was entered on September 30, 2014, more than five (5) years after the complaint had been filed. Thus, respondent should be afforded latitude in the timing of reimbursement of its expenses incurred over a five year period.

During this long five year period of uncertainty, respondent choose not to take on a volume of social security disability cases as an abundance of caution as the formal charges seemed devastating and respondent did not want to harm new clients if they would have to get another attorney. Thus, respondent's income was reduced drastically, severely affecting respondent's

ability to pay.

Then to exacerbate matters, David Hendrickson, issued a form 1099 with the IRS in the amount of \$48,607.25 as cancellation of debt during 2012 which required respondent to pay taxes on that amount which were clearly spent on advertising and employees as demonstrated in the ODC proceedings. (*Statement of charges page 27, APP 38*). This fact further reduced respondent's ability to reimburse the ODC.

Then, David Hendrickson was allowed to take \$5,105.25 out of respondent's checking account for payment of fees for client W.A., to which the SSA attorney fees were only \$3,548.50. Thus, Hendrickson received an additional \$1,556.75 than what was agreed upon in mediation. The agreement was for respondent to "go to the SSA . . . and will thereafter cooperate with re-issuance, assignment and/or other provisions as may be necessary to transfer all rights for checks previously issued in the amounts of . . . for the following clients i. W.A in the amount of \$5,105.25. However, during this time the SSA acknowledged that it had miss calculated the amount of attorney fees owed for the representation of W.A. and the re-issued check was in the amount of \$3,548.50.ⁱⁱⁱ These facts were represented during the hearing and nothing was ever done by the ODC to correct the matter or charge Mr. Hendrickson. Again, this fact further reduces respondent's ability to pay.

Respondent paid a total of \$32,073.34 to Hendrickson and Long of which all income tax ramifications were distributed to respondent as the fees were paid to respondent by the SSA and not the firm of H&L. Thus, these attritional income taxes paid by respondent further affects respondent's ability to pay.

Respondent, not being able to reimburse the ODC, as of the current date, for its expenses, had spoken with a representative at the ODC and advised that respondent recently learned that he had a small 401k from Mass Mutual of approximately \$3,300.00 remaining from his employment

with Jan Dils and respondent had requested the paperwork to cash it in and would immediately upon receiving same remit it in full to the ODC. Respondent has not received the distribution from Mass Mutual, but once received, respondent will immediately remit it in full to the ODC as reimbursement. In fairness to respondent, the ODC waited 40 months to file charges after the complaint was filed, and worked the claim for more than five (5) years. Eighteen months should not be construed as being non-compliant and the fact that respondent has advised ODC of the intent to pay once the 401k distribution is made. Respondent should have the distribution soon and will keep ODC advised of any and all communication and progress with Mass Mutual.

Clearly, respondent has not been disobedient to this Honorable Court's Order, as respondent promptly acquired the six hours of ethics CLE's and has a clear plan in place and communicated the same to the ODC as to reimbursing the ODC's expenses.

V. CONCLUSION

Based on the foregoing, Respondent respectfully request that this Honorable Court not find respondent in contempt and not suspend respondent's license to practice law.

Respondent,



Benjamin F. White WVSB 10062
338 Main Street
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304.395.0000
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ⁱ Current CLE Transcript is attached.

ⁱⁱ Petitioner's Complaint page 1 first sentence in the STATEMENT OF THE CASE.

ⁱⁱⁱ Copy of check attached and log of calls made to SSA regarding same.

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APPENDIX

Benjamin F. White
Respondent
338 Main Street
Chapmanville, WV 25508
304.395.0000
ben@bfwhite.com

CERTIFICATE OF SERVICE

This is to certify that I, Benjamin F. White, respondent, have this 20th day of May 2016, served a true copy of the foregoing **“RESPONDENT’S RESPONSE TO SHOW CAUSE”**, **“MOTION TO FILE RESPONSE OUTSIDE TIME LIMITS”** and appendix attached hereto, upon Petitioner Renee N. Frymyer, of the ODC via email to the following address:

rfrymyer@wvdc.org



Benjamin F. White

CERTIFICATE OF AUTHENTICITY

I, Benjamin F. White, Respondent, hereby certify that all documents provided in this Appendix are true and accurate copies from files maintained by Respondent.

A handwritten signature in black ink, appearing to be 'BF' with a flourish extending from the 'F'.

Benjamin F. White

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I. EXHIBIT 1 (Current CLE Transcript)..... 1

II. EXHIBIT 2 (Copy of W. A. actual check and log of calls made to SSA)..... 2

Exhibit 1

THE WEST VIRGINIA MANDATORY CONTINUING LEGAL EDUCATION COMMISSION



MCLE TRANSCRIPT

As of: 05/19/2016

Benjamin F. White - 10062
Benjamin F. White, Attorney at Law
338 Main St
Chapmanville, WV 25508

Reporting Period: July 01, 2014 to June 30, 2016

MCLE Requirement: 24 credit hours, at least 3 of which must be in legal ethics, law office management, substance abuse and/or elimination of bias.

For attorneys admitted between July 01, 2014 and June 30, 2015 a total of 12 credit hours are required at least 3 of which must be in legal ethics, law office management, substance abuse and/or elimination of bias.

For attorneys admitted between July 01, 2015 and June 30, 2016 no credits are required - exempt for the 2014-2016 reporting period.

Sponsor	Course	MCLE Date	Attendance	Ethics, Office Mgt, Sub Abuse & Elim of Bias	In House	Online/Audio Visual Credits	Publications	Teaching Hours
NBI, Inc....	Drafting Gun Trusts	07-28-14	0	0	0	1.8	0	0
WVCLE	UPDATE ON THE LAW	10-04-14	9.9	3	0	0	0	0
WVCLE	The New Amendments to the WV Rules of Professional Conduct	11-20-14	3	3	0	0	0	0
West Virgini...	Carryover	07-01-14	1.5	0	0	0	0	0
			Total: 14.4	Total: 6	Total: 0	Total: 1.8	Total: 0	Total: 0

TOTAL CREDITS EARNED:

16.20 Including **6.00** of Ethics/Office Management/Substance Abuse and/or elimination of bias.

United States Treasury

15-51
000

P 464,235,948

Check No.



10 01 12 28045300 KANSAS CITY, MO 4030 13439077
0127004545 4030 13439077 S 0000120926PMDM

Pay to

the order of

BENJAMIN WHITE
ATTY FOR W J ANDERSON
338 MAIN ST
CHAPMANVILLE WV 25508

\$\$\$3548*50

VOID AFTER ONE YEAR

REGIONAL UNDERWRITING OFFICER



SOC SEC FOR INS

⑆000000518⑆ 134390773⑆ 091012

RECEIVED

By Sydney Napier at 4:16 pm, Oct 08, 2012

Exhibit 2

1/6/10 check issued in incorrect amount of \$5,105.25

4/11 check returned to SSA in CRW as stale by BFW and JMM

4/24/12 BW approved for \$3,548.50

6/1/12 Still being processed

7/14/12 correspondance sent to JD about check being incorrectly sent to her instead of BFW.

7/27/12 SSA retickled the payment request. of April 24, 12

10/8/12 recieved check from SSA of fees of \$3,548.50 check dated 10/1/12. Deposited into separte account