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



**LAWYER DISCIPLINARY BOARD,**

**Petitioner,**

**v.**

**No. 18-0918**

**JAMES B. ATKINS,**

**Respondent.**

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**BRIEF OF THE LAWYER DISCIPLINARY BOARD**

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## I. STATEMENT OF THE CASE

### A. NATURE OF PROCEEDINGS AND RECOMMENDATION OF THE HEARING PANEL SUBCOMMITTEE

This is a disciplinary proceeding against Respondent James B. Atkins, (hereinafter “Respondent”), arising as the result of a Statement of Charges issued against him and filed with the Supreme Court of Appeals of West Virginia on or about October 23, 2018. Respondent was served with the Statement of Charges on October 26, 2018, and filed a timely response thereto. Respondent provided his mandatory discovery on December 19, 2018. Senior Lawyer Disciplinary Counsel filed “Agreed Joint Stipulations” on January 30, 2019. The Hearing Panel Subcommittee (“HPS”) accepted the stipulations at the telephonic prehearing held on February 7, 2019.

The matter then proceeded to hearing in Charleston, West Virginia, on February 21, 2019. Carol P. Smith, Esquire, appeared on behalf of Respondent.<sup>1</sup> Andrea J. Hinerman, Senior Lawyer Disciplinary Counsel, appeared on behalf of the Office of Lawyer Disciplinary Counsel. The Hearing Panel Subcommittee, comprised of Kelly D. Ambrose, Esquire, Chairperson; James R. Akers, II, Esquire; and Loretta Walker Sites, laymember, presided over the proceedings.

The Hearing Panel Subcommittee heard testimony from Kirk Brumbaugh, Esquire, Respondent and the arguments of counsel. The Hearing Panel Subcommittee also admitted into evidence the Office of Lawyer Disciplinary Counsel’s Exhibits 1-17, Respondent’s exhibits 2-23 [filed under seal] and Joint Exhibit 1.

On or about July 1, 2019, the Hearing Panel Subcommittee issued its decision in this matter and filed with the Supreme Court of Appeals of West Virginia its “Report of the Hearing Panel Subcommittee” (hereinafter “Report”). The Hearing Panel Subcommittee properly found

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<sup>1</sup> On or about April 1, 2019, a Notice of Substitution of Counsel was filed substituting Jared M. Tully, Esquire, as counsel for Respondent.

that the evidence established that Respondent violated the following Rules of Professional Conduct: Rule 1.3, Rule 1.4(a)(3), Rule 1.4(a)(4), Rule 1.15(a), Rule 1.15(d), Rule 5.3, Rule 8.1(a), Rule 8.4(c) and Rule 8.4(d).

The Hearing Panel Subcommittee issued the following recommendation as the appropriate sanction in this matter: (1) that Respondent's law license be suspended for a period of three (3) months, with automatic reinstatement of his license to practice law pursuant to the provisions and requirements of Rule 3.31 of the Rules of Lawyer Disciplinary Procedure; (2) that prior to reinstatement, Respondent shall complete an additional nine (9) hours of continuing legal education during the current reporting period of which at least three (3) hours should be in IOLTA accounts and the other six (6) hours in the area of ethics and office management; (3) that Respondent must comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure; and (4) that Respondent shall be ordered to pay costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure and the same shall be paid prior to reinstatement.

**B. FINDINGS OF FACT**

Respondent is a lawyer practicing in Buffalo, which is located in Putnam County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on April 23, 2002. As such, Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

**COUNT I**  
**I.D. No. 17-01-009**  
**Complaint of Kirk E. Brumbaugh, Esquire**

On or about January 9, 2017, Kirk E. Brumbaugh, Esquire, filed a complaint against Respondent. [Tr. 12; ODC Ex. 1] Mr. Brumbaugh alleged that on or about November 17, 2015,

Respondent received funds in the amount of \$14,807.55 as a result of a settlement agreement that had been reached with a debtor, but that Respondent had yet to remit the funds to Mr. Brumbaugh's law firm, Brumbaugh & Quandahl.<sup>2</sup> [Tr. 16-18; ODC Ex. 1, 000002] Mr. Brumbaugh wrote that Respondent was contacted by email on or about January 4, 2016, to inquire about the status and Respondent advised that the funds would be received from the debtor in or about February 2016. [Tr. 16-18; ODC Ex. 1, 000012] Respondent and/or employees of his law office then failed to respond to seven (7) emails sent between March 2016 and September 2016, and nine (9) voicemails left between September 2016 and November 2016, wherein Mr. Brumbaugh and/or his staff inquired about the status of the funds. Respondent responded to Mr. Brumbaugh's inquiries on or about December 20, 2016, but a complaint was filed when the funds were not thereafter received. Mr. Brumbaugh also alleged that Respondent had used the settlement money for his own benefit. [Tr. 16-18; ODC Ex. 1, 000009-000012]

In his timely filed response to the complaint, Respondent said that he was not advised of the issue until late November of 2016, but maintained that he immediately attempted to resolve the dispute with Mr. Brumbaugh. Respondent said that in late December of 2016, Mr. Brumbaugh sent an associate to Respondent's office to review his Brumbaugh & Quandahl files. Respondent and Mr. Brumbaugh's associate "worked together to audit every single file, going back over a decade." Respondent denied using any money belonging to Mr. Brumbaugh for his own benefit. Respondent said that they had reached an agreement whereby he agreed to close all files associated with Mr. Brumbaugh's law firm but he would keep open the file Mr. Brumbaugh

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<sup>2</sup> At a September 12, 2017 Sworn Statement, Respondent said that Brumbaugh & Quandahl was a "clearing house in the debt collection industry" whose "job is take the large portfolio of cases that [a national bank] might have and to go and find attorneys that are in the network and to audit them, make sure they're compliant with whatever the terms are of that particular bank or what they think are industry standard and to farm out the cases that happen to be in those states or those regions." Respondent "answered" to Brumbaugh & Quandahl and while his client would be the named plaintiff (i.e., the bank), the client would deal with Brumbaugh & Quandahl. Respondent had been handling debt collection cases for Brumbaugh & Quandahl for more than a decade. [ODC Ex. 8, 000057-000060]

had referenced in his complaint until Respondent sent the final remittance in the “next 30 to 45 days” following the December 2016 file audit. Respondent said he also sent “some follow-up correspondence to [Mr. Brumbaugh’s] firm regarding the closure of cases and [the final remittance]” and provided a copy of the remittance check dated January 25, 2017, which he sent to Mr. Brumbaugh along with his response to the ethics complaint. The copy of a check submitted with his response is check No. 086105 in the amount of \$11,150.91<sup>3</sup> drawn on the Atkins & Ogle Law Offices, LC, Client Account, dated January 25, 2017, and made out to Brumbaugh & Quandahl, PC. [Tr. 23, 26, 28-29; ODC Ex. 3; *See also*, ODC Ex. 17, 000495]

Respondent appeared at the ODC on September 12, 2017, for a sworn statement in this matter. Respondent said that the underlying case was “dormant” for a number of years until the debtor wanted to either refinance a loan or purchase a new home. Respondent said that his office received a number of telephone calls from the debtor and the title company during that time wherein one or the other asked for a “payoff amount or what would be the settlement amount...” When he and/or his office received these types of calls, Respondent or someone at his office would contact Brumbaugh and Quandahl who, in turn, would contact the bank to determine what amount the bank would take to settle the debt. In most cases, once he received notice about the amount, Respondent would send the debtor a letter indicating that if a specific amount was paid within so many days, then the debtor would receive a release. Respondent said in this case, there was a “disagreement” between his office and Mr. Brumbaugh’s office because Respondent thought there was an opportunity to obtain a payoff of the entire debt rather than a settlement amount for less than the entire amount. However, Respondent said that Brumbaugh & Quandahl indicated that it wanted a settlement letter sent, not a payoff letter. [ODC Ex. 8, 000062-000065]

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<sup>3</sup> The amount of this check represents the settlement funds minus Respondent’s fees and costs. [Tr. 23]

Respondent said that the person in his office who communicated with Brumbaugh & Quandahl advised him that she had responded to their inquiries about the status of the matter. Respondent said he “was inclined to believe her” and that his staff responded by telephone to the inquiries, rather than by email. Nonetheless, Respondent acknowledged that there had been no email responses from his office for approximately eleven (11) months and that he only became involved in late November 2016 to deal with the matter. Respondent acknowledged that he is responsible for the actions of his staff in his law office, that his office had received the debtor’s settlement check on or about January 16, 2016, that the funds had been deposited into his client trust account, that he had held the money in that account for a year, and that the funds had not been remitted to Mr. Brumbaugh until after the filing of this ethics complaint in January of 2017. [ODC Ex. 8, 000065-000072; 000081; 000087; *See also*, ODC Ex. 9, 000187-188]

Respondent maintained bank accounts at United Bank until on or about June 30, 2017, and at City National Bank thereafter. These bank accounts included an operating account and client trust accounts, in the name of Atkins & Ogle Law Firm, LC. [ODC Ex. 8, 000054-000055]

On or about November 13, 2017, and November 14, 2017, the ODC received Respondent’s bank records from United Bank and City National Bank, respectively, in response to a subpoena issued on October 13, 2017. The subpoenas requested bank records from accounts held in the name of James B. Atkins, Esquire, and/or Atkins & Ogle Law Offices, LC, from January 1, 2017, to present date [of the subpoena]. [ODC Ex. 17 (Sealed)]

On or about May 29, 2018, the ODC received additional bank records from United Bank in response to a subpoena issued on May 2, 2018. This subpoena requested bank records from accounts held in the name of James B. Atkins, Esquire, and/or Atkins & Ogle Law Office, LC, from January 1, 2016, through December 31, 2016. [ODC Ex. 16, Vol. II (Sealed)]

On January 20, 2016, a check for \$14,807.55 from Title Source, Inc., was deposited into Respondent's "Client Account" at United Bank. The payee was Commonwealth Financial Systems, Inc., 105 River Vista Drive, Buffalo, West Virginia, 25033. [Tr. 145-146; ODC Ex. 16, Vol. II, 00391, 003929, 004021; *See also*, ODC Ex. 9, 000187] On January 31, 2016, the ending balance on Respondent's "Client Account" was \$13,299.64. [Tr. 146-149; ODC Ex. 16, Vol. II, 003911]

The ending balance on Respondent's "Client Account" thereafter from February to October, 2016, returned to a balance over \$14,807.55. [Tr. 150-152; ODC Ex. 16, 004036, 004050, 004068, 004084, 004100, 004116, 004129, 004146, 004163] However, the ending balance of Respondent's "Client Account" on November 30, 2016, was \$6,614.80. [Tr. 152; ODC Ex. 16, Vol. II, 004178] On December 31, 2016, the ending balance of Respondent's "Client Account" was negative \$42.99. [Tr. 152-154; ODC Ex. 16, Vol. II, 004325] On January 31, 2017, the ending balance of Respondent's "Client Account" was \$14,572.55. [ODC Ex. 17, 000368] Respondent's bank records indicate that a check in the amount of \$11,150.91 was negotiated on or about February 14, 2017. [ODC 17, 000464, 000495]

### **C. CONCLUSIONS OF LAW**

The HPS found that because Respondent failed to act with reasonable diligence in this matter, he violated Rule 1.3 of the Rules of Professional Conduct.<sup>4</sup> The HPS also found that Respondent had failed to keep Mr. Brumbaugh reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct.<sup>5</sup> The HPS further found that

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<sup>4</sup> **Rule 1.3 Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

<sup>5</sup> **Rule 1.4 Communication**

Respondent failed to hold client funds in a designated “client’s trust account and failed to promptly notify Mr. Brumbaugh about the receipt of funds in which Mr. Brumbaugh had an interest and then failed to deliver the funds in violation of Rule 1.15(a)<sup>6</sup> and (d).<sup>7</sup> The HPS found that Respondent wrongfully misappropriated and converted funds belonging to his client or a third party to his own use in violation of Rule 8.4(c) and 8.4(d) of the Rules of Professional Conduct.<sup>8</sup> The HPS also found that Respondent failed to properly supervise his nonlawyer assistants to ensure that their conduct was compatible with Respondent’s professional obligations in violation of Rule 5.3 of the Rules of Professional Conduct.<sup>9</sup> Finally, the HPS found that

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- (a) A lawyer shall: ... (3) keep the client reasonably informed about the status of the matter; ... (4) promptly comply with reasonable requests for information...

<sup>6</sup> **Rule 1.15. Safekeeping property.**

- (a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds shall be kept in a separate account designated as a “client’s trust account” in an institution whose accounts are federally insured and maintained in the state where the lawyer’s office is situated, or in a separate account elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Such separate accounts must comply with State Bar Administrative Rule 10 with regard to overdraft reporting. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation...

<sup>7</sup> **Rule 1.15. Safekeeping property.**

- (d) Upon receiving funds or other property which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

<sup>8</sup> **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; ...

<sup>9</sup> **Rule 5.3. Responsibilities Regarding Nonlawyer Assistance.**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

Respondent knowingly made a false statement of material fact in connection with a disciplinary matter at his September 12, 2017 sworn statement [ODC Ex. 8, 000087] when he answered “Yes, ma’am” to the question, “[a]nd so that money had been held in your [client] account for a year[,]” when the balance of that bank account fell below the amount that Respondent was required to safeguard in violation of Rule 8.1(a) of the Rules of Professional Conduct.<sup>10</sup>

## II. SUMMARY OF ARGUMENT

This Court has long recognized that attorney disciplinary proceedings are not designed solely to punish the attorney, but also to protect the public, to reassure the public as to the reliability and integrity of attorneys, and to safeguard its interests in the administration of justice. Lawyer Disciplinary Board v. Taylor, 192 W.Va. 139, 451 S.E.2d 440 (1994). The ODC asserts that the findings of fact and conclusions of law made by the HPS of the Lawyer Disciplinary Board in its Report were correct and supported by reliable, probative, and substantial evidence on the whole adjudicatory record. The HPS correctly found that Respondent committed multiple violations of the Rules of Professional Conduct and recommended that Respondent be suspended

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- (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer;
  - (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; and
  - (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional conduct if engaged in by a lawyer if:
    - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
    - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

<sup>10</sup> **Rule 8.1. Bar Admission and Disciplinary Matter.**

- [A] lawyer in connection with ... a disciplinary matter, shall not:
- (a) knowingly make a false statement of material fact; ....

for three (3) months with automatic reinstatement, among other sanctions. The HPS properly found that the clear and convincing evidence established that Respondent committed violations of Rules 1.3; 1.4(a)(3) and (4); 1.15(a) and (d); 5.3; 8.1(a); and 8.4(c) and (d). The ODC asserts that the three (3) month suspension with automatic reinstatement and other sanctions proposed by the HPS are appropriate considering the clear and convincing evidence supporting the same, the aggravating and mitigating factors, and the precedent of this Honorable Court. In ordering such sanction in these proceedings, the Court will be serving its goals of protecting the public, reassuring the public as to the reliability and integrity of attorneys, and safeguarding its interests in the administration of justice.

### **III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

This Honorable Court's September 5, 2019 Order set this matter for oral argument pursuant to Rule 19 of the Rules of Appellate Procedure.

### **IV. ARGUMENT**

#### **A. STANDARD OF PROOF**

In lawyer disciplinary matters, a *de novo* standard of review applies to questions of law, questions of application of the law to the facts, and questions of appropriate sanction to be imposed. Roark v. Lawyer Disciplinary Board, 207 W. Va. 181, 495 S.E.2d 552 (1997); Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 452 S.E.2d 377 (1994). The Supreme Court gives respectful consideration to the Lawyer Disciplinary Board's recommendations as to questions of law and the appropriate sanction, while ultimately exercising its own independent judgment. McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381.

Substantial deference is to be given to the Lawyer Disciplinary Board's findings of fact unless the findings are not supported by reliable, probative, and substantial evidence on the

whole record. McCorkle, Id.; Lawyer Disciplinary Board v. Cunningham, 195 W. Va. 27, 464 S.E.2d 181 (1995). At the Supreme Court level, "[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." Cunningham, 464 S.E.2d at 189; McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381. The charges against an attorney must be proven by clear and convincing evidence pursuant to Rule 3.7 of the Rules of Lawyer Disciplinary Procedure. *See*, Syl. Pt. 1, Lawyer Disciplinary Board v. McGraw, 194 W. Va. 788, 461 S.E.2d 850 (1995).

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).

**B. ANALYSIS OF SANCTION UNDER RULE 3.16 OF THE  
RULES OF LAWYER DISCIPLINARY PROCEDURE**

Syl. Point 4 of Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d. 722 (1998) holds: Rule 3.16 of the Rules of Lawyer Disciplinary Procedure provides that when imposing a sanction after a finding of lawyer misconduct, the Court shall consider: (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors. A review of the extensive record in this matter indicates that Respondent has transgressed all four factors set forth in Jordan.

**1. Respondent violated duties he owed to his client, to the legal system and to the legal profession.**

It is without question that Respondent engaged in conduct in violation of the Rules of Professional Conduct and violated duties owed to his client, the legal system and the legal profession. The evidence clearly and convincingly demonstrates that Respondent committed multiple violations of the Rules of Professional Conduct, including: (1) failure to act with reasonable diligence and promptness in representing his client; (2) failure to communicate effectively with his client; (3) failure to promptly notify his client that client funds had been received and failure to promptly remit those funds to the client which resulted in his failure to safeguard his client's property such that client money was commingled with other law firm money and misappropriated; (4) failure to supervise his nonlawyer staff and to make reasonable efforts to ensure that the firm had in effect measures giving reasonable assurance that the nonlawyer's conduct was compatible with his own professional obligations; (5) knowingly making a false statement of material fact in connection with a disciplinary matter; and thus, (6) engaging in conduct that constitutes misrepresentation and which was prejudicial to the administration of justice. [Tr. 161-168]

The Complainant in this matter is Kirk Brumbaugh, Esquire, of Brumbaugh & Quanadahl which is a "clearing house in the debt collection industry." [ODC Ex. 8, 000057]. Mr. Brumbaugh's client is First National Bank of Omaha and First Bank Card Center and he represents those entities in consumer credit card accounts all over the United States. [Tr. 20-21]. Mr. Brumbaugh contracts with attorneys through a "law list" which is "a term of art in the collection/lawyer industry... which are lists that attorneys have to pay to register with to then receive cases. The benefit for clients is at least for two years after placement, a law list provide [sic] fiduciary fidelity bonding coverage." [Tr. 21] Mr. Brumbaugh said that Respondent's law firm was forwarded cases "off of a general bar, which is a law list headquartered in Cleveland"

and that Respondent's law firm was "a legacy law firm because it still had a case [from 2007] but was not under contract."<sup>11</sup> [Tr. 21-22]

In this matter, the underlying file had been dormant for many years but on October 15, 2015, Mr. Brumbaugh testified that his office received a telephone call from the client [the bank] that there was contact from a title company who offered to settle a judgment that Respondent's law firm had obtained against a debtor in approximately 2013. [Tr. 16; ODC Ex. 1, 000020] Mr. Brumbaugh testified that his client, the bank, instructed them to accept the settlement of the debt. [Id.] This instruction was conveyed to Respondent's law firm by email dated November 13, 2015, and then confirmed again through a series of emails on November 17, 2015, including an email from Respondent's employee indicating that the letter regarding the acceptance of the \$14,807.55 debt settlement would be faxed on that same date. [Tr. 23; ODC Ex. 1, 000013-15, 000021-23] The next communication from Mr. Brumbaugh's office to Respondent's office was on January 4, 2016, and was an inquiry as to when the funds could be expected to be forwarded. [Tr. 20; ODC Ex. 1, 000012, 000023]. Respondent's office responded by email on January 5, 2016, stating that "it would be close to February before we [Respondent's office] received the funds." [ODC Ex. 1, 000012, 000023]. Respondent's bank records show that a check in the amount of \$14,807.55 from Title Source, Inc., was deposited into account Respondent's "Client Account" at United Bank, account number 0020043338, on January 20, 2016. [Tr. 145-146; ODC Ex. 16, Vol. II, 00391, 003929, 004021] There was no further communication from either Respondent or Respondent's office regarding the January 20, 2016 receipt of funds into his account despite seven (7) emails sent by Mr. Brumbaugh's law firm between March 2016 and September 2016, and nine (9) voicemails left between September 2016 and November 2016. [ODC Ex. 1, 000009-000026] On November 18, 2016, Mr. Brumbaugh's office was finally able

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<sup>11</sup> The process changed after 2012 with the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act which heavily regulated the consumer bank industry. [Tr. 22]. Mr. Brumbaugh stated that since 2012, he enters into a multipage contract with a corresponding attorney which mirrors the contract he has with the bank. [Id.]

to accomplish contact with Respondent. [Id.]

Mr. Brumbaugh testified that he then sent an employee to Respondent's office in late December 2016 to perform a termination audit and close the file at issue in this matter. [Tr. 18, 26, 27-29, 56-59, ODC Ex. 1, 000002] Mr. Brumbaugh testified that his employee also had instructions to "either collect the funds or go to make a police report." However, Mr. Brumbaugh said that the funds were not collected and "for whatever reason [his employee] could not get [the police report] accomplished in the timeframe that he was there...." [Tr. 59] When the funds were thereafter not timely forwarded to Mr. Brumbaugh, he filed the complaint giving rise to this disciplinary proceeding. [ODC Ex. 1] Respondent finally remitted the funds to Mr. Brumbaugh when he filed his response to the complaint on or about January 25, 2017. [ODC Ex. 2, 000034; See also, ODC Ex. 17, 000495]

At the hearing, Respondent admitted to a violation of Rule 1.15(d) of the Rules of Professional Conduct. [Tr. 161]. The evidence clearly demonstrates that Respondent failed to safeguard these client funds once the same was deposited into his "Client Account" at United Bank, account number 0020043338, on January 20, 2016.<sup>12</sup> Respondent admitted at the hearing that approximately \$10,000.00 in debits occurred in account 0020043338 on the day following the deposit of the \$14,807.55. On January 31, 2016, the ending balance on Respondent's "Client Account" was \$13,299.64. [Tr. 146-149; ODC Ex. 16, Vol. II, 003911] Moreover, Respondent admitted that the account held less than the \$14,807.55 deposit at multiple times during the timeframe of this matter. [Tr. 132; 150-152, 160; 150-152; ODC Ex. 16, Vol. II, 004036, 004050, 004068, 004084, 004100, 004116, 004129, 004146, 004163; 004178, 004325]

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<sup>12</sup> Respondent was also charged with violating Rule 1.15(a) which provides in part that "[a] lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation from the lawyer's own property. Funds shall be kept in a separate account designated as a "client's trust account ...." In this matter, the funds in question were deposited into a "client account" which Respondent testified at the hearing held client funds and was a "client trust account." [Tr. 104] The evidence shows that the client funds were almost immediately removed from the "client account" and into the firm's operating account for use by the law firm. [Tr. 146-161]

Respondent also testified at the hearing that his office was using this account to “front court costs” even though the account was to hold only client funds.<sup>13</sup> [Tr. 146-147; 148]

Respondent testified that the employee with whom Mr. Brumbaugh’s office was communicating with on this matter was experiencing personal issues and that beginning in or about March of 2016, she was in and out of the office for extended periods of time dealing with those personal issues.<sup>14</sup> [Tr. 127; 136-137]. Respondent also reported that his law office was experiencing financial strain as a result of changes to the debt collection industry and he had laid off twelve (12) of his twenty-two (22) staff in July of 2015. [Tr. 177-178, 187] However, Respondent admitted that it is ultimately his responsibility to ensure that client communication with his office was addressed and that during this time, it was not. [Tr. 137] Respondent also testified that he only learned about the breakdown in communication with Mr. Brumbaugh and his law firm and his law firm’s failure to remit the funds in late November 2016 when he finally spoke personally with a representative from Mr. Brumbaugh’s law firm. [Tr. 129] Respondent testified that he has since made changes to his office practices to ensure that a similar situation does not occur in the future. [Tr. 135-136, 184]

In conclusion, Respondent’s misconduct in dealing with the \$14,807.55 deposit are violations of his duties owed to his client, the legal system and the legal profession and at the hearing, Respondent admitted to violations of Rules 1.3, 1.4, 1.15(d) and 5.3. [Tr.161-168] Respondent did not admit to violating Rules 8.1(b) and 8.4(c) & (d) as charged in the Statement of Charges. However, Respondent admitted that he did not immediately remit the client funds in December of 2016 even after he was notified about the failure to timely remit the funds to Brumbaugh and Quandahl in November of 2016 or in December 2016 when a representative to

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<sup>13</sup> Respondent testified that his law office has eighteen (18) different bank accounts. [Tr. 132]

<sup>14</sup> In fact, Respondent testified that this employee had left his employment but had since returned to his office and that he considered her to be a “valued and trusted employee.” [Tr. 128]

Brumbaugh and Quandahl came to his office to perform a termination audit. [Tr. 180]. Respondent also admitted that he was not aware of the money being moved from account number 0020043338 (a client account) for use in paying for law firm operating expenses until “[s]ometime after I found out that I would be coming in on these formal charges.” [Tr. 170]

**2. Respondent acted negligently and knowingly.**

The *ABA Standards for Imposing Lawyer Sanctions* states that the most culpable mental state is that of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his conduct, both without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

The evidence establishes that Respondent acted negligently in supervising his non-lawyer staff which resulted in the co-mingling of client funds with law office operating funds. By all accounts, the \$14,807.55 of client funds was deposited into a “client account” holding client funds and that Respondent’s non-lawyer staff transferred money from the “client account” to the law firm’s operating account for use by the law firm. Respondent also testified that the \$14,807.55 deposit was not properly coded and therefore, the accounting system was unable to track the funds. [Tr. 193] The result of Respondent’s negligent conduct was that Respondent’s client was not promptly advised of the receipt of client funds and thus, the client funds in question were misappropriated from his client account for use in the operation of Respondent’s law office.

Respondent then acted knowingly after November 2016 when he was advised by his client that the funds had not been promptly remitted following the receipt of the same in

Respondent's office on January 20, 2016. Respondent then neither remitted the client funds following the November 2016 telephone contact nor during the December 2016 personal visit from a representative from Mr. Brumbaugh's law firm. The evidence is that Respondent did not remit the funds that were clearly due to his client until late January 2017, after the filing of the complaint against him.

**3. The amount of actual or potential injury caused by the lawyer's misconduct.**

Respondent's client and Mr. Brumbaugh, as the client's representative, suffered injury when Respondent and his law office did not promptly remit the funds which had been deposited into Respondent's "client account" on January 20, 2016. Because of Respondent's failure to properly supervise his staff, Mr. Brumbaugh and his staff were unable to contact Respondent for at least eleven (11) months and thus, had no knowledge of what had happened to the funds. Nonetheless, Mr. Brumbaugh testified that his client had to release the lien on the debtor's mortgage at the time because the bank had been notified that the funds had been deposited into Respondent's account, even though the funds had not been remitted to the client. [Tr. 18; 25] Mr. Brumbaugh also testified that "[his client] has requirements under IRS regulation and an oversight by the Office of the Comptroller of the Currency to make sure that if a balance is written off, the 1099's are timely issued. And so the non-remittance of the funds in addition to making [his] own office look bad was causing regulatory and audit issues with the bank." [Tr. 18] Mr. Brumbaugh testified that he also had to expend funds to send his own representative to Respondent's law office in West Virginia to "either pick up a check or report the matter to local law enforcement." [Id.]

**4. The existence of any aggravating factors.**

Aggravating factors are considerations enumerated under Rule 3.16 of the Rules of Lawyer Disciplinary Procedure for the Court to examine when considering the imposition of

sanctions. Elaborating on this rule, the Scott Court held “that aggravating factors in a lawyer disciplinary proceeding ‘are any considerations, or factors that may justify an increase in the degree of discipline to be imposed.’” Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 216, 579 S.E. 2d 550, 557 (2003) quoting *ABA Model Standards for Imposing Lawyer Sanctions*, 9.21 (1992). The aggravating factors present in this case are (1) substantial experience in the practice of law and (2) multiple offenses. Respondent has been licensed to practice law for seventeen (17) years and multiple offenses were committed following the receipt and deposit of the \$14,807.55 check into Respondent’s “client account.”

**5. The existence of any mitigating factors.**

In addition to adopting aggravating factors in Scott, the Scott Court also adopted mitigating factors in a lawyer disciplinary proceeding and stated that mitigating factors “are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.” Scott, 213 W.Va. at 216, 579 S.E.2d at 557 (2003) quoting *ABA Model Standards for Imposing Lawyer Sanctions*, 9.31 (1992).<sup>15</sup> It should be clear that mitigating factors were not envisioned to insulate a violating lawyer from discipline. The mitigating factors present in this case are (1) absence of a disciplinary record and (2) remorse. Respondent has no prior discipline and he stated at that hearing that “I’m proud, not of being here, ....” [Tr. 134]

The fact that Respondent finally remitted funds to the client in January of 2017 should not be considered as mitigation in Respondent’s favor in this matter. *ABA Model Standards for Imposing Lawyer Sanctions*, 9.4(a) (1992), provides that “forced or compelled restitution” is a

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<sup>15</sup> The Scott Court held that mitigating factors which may be considered in determining the appropriate sanction to be imposed against a lawyer for violating the Rules of Professional Conduct include: (1) absence of a prior disciplinary record; (2) absence of a dishonest or selfish motive; (3) personal or emotional problems; (4) timely good faith effort to make restitution or to rectify consequences of misconduct; (5) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (6) inexperience in the practice of law; (7) character or reputation; (8) physical or mental disability or impairment; (9) delay in disciplinary proceedings; (10) interim rehabilitation; (11) imposition of other penalties or sanctions; (12) remorse; and (13) remoteness of prior offenses.

factor which is neither aggravating nor mitigating. The record is clear that Respondent did not remit the client funds, which were clearly owed to the client, until after the disciplinary complaint was filed against him by Mr. Brumbaugh.

### C. SANCTION

The principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Syl. pt. 3, Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); and Syl. pt. 2, Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999). "A sanction is to not only punish the attorney, but should also be designed to reassure the public confidence in the integrity of the legal profession and deter other lawyers from similar conduct." Syl. pt 2, Committee on Legal Ethics v. White, 189 W.Va. 135, 428 S.E.2d 556 (1993); Syl. pt 3, Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987); Syl. pt. 5, Committee on Legal Ethics v. Roark, 181 W.Va. 260, 382 S.E.2d 313 (1989); Syl pt. 3, Lawyer Disciplinary Board v. Friend, 200 W.Va. 368, 489 S.E.2d 750 (1997); and Syl pt. 3, Lawyer Disciplinary Board v. Keenan, 208 W.Va. 645, 542 S.E.2d 466 (2000).

Absent any aggravating or mitigating circumstances, Standard 4.12 of the *ABA Model Standards for Imposing Lawyer Sanctions* provides that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client and Standard 4.42 provides that suspension is generally appropriate when (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

In regard to Respondent's failure to safeguard client funds in his "client account," the Supreme Court has stated that "the penalty for a misappropriation offense must be consistent with the level of intent by the lawyer and the level of injury." Lawyer Disciplinary Board v. Kupec (Kupec II), 204 W.Va. 643, 515 S.E.2d 600 (1999). The Court stated

The American Bar Association Model Standards for Imposing Lawyer Sanctions ... classify misappropriation offenses according to the level of intent and level of the injury. The ABA standards are consistent with the general rule in finding disbarment of knowing conversion with injury or potential injury to the owner of entrusted funds. Where there is little or no actual or potential injury to the owner of entrusted funds, and when the lawyer knows or should know he/she is dealing improperly with entrusted funds, the ABA standards suggest suspension. When the lawyer is merely negligent in dealing with entrusted funds, the ABA standards suggest reprimand or admonishment.

Kupec (Kupec II), 204 W.Va. at 648-649, 515 S.E.2d at 605-606. The Kupec I Court had previously recognized that:

The term misappropriation can have various meaning. In fact, the misuse of another's funds is characterized as misappropriation or conversion. Black's defines misappropriation as "[t]he unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which intended . . . including not only stealing but also unauthorized temporary use for [the] lawyer's own purpose, whether or not he derives any gain or benefit from therefrom. Black's Law Dictionary (6<sup>th</sup> ed.1990). See In re Wilson, 81 N.J. 451, 409 A.2d 1153, 1155 n.1 (1979) (defining misappropriation as 'any unauthorized use by the lawyer of client's funds entrusted to him including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom").

Lawyer Disciplinary Board v. Kupec (Kupec I), 202 W.Va. 556, 568, 505 S.E.2d 619, 631.

Like most courts, West Virginia holds that absent compelling circumstances, misappropriation or conversion by a lawyer of funds entrusted to his care warrants disbarment. Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d 722 (1998); and Lawyer

Disciplinary Board v. Kupec (Kupec I), 202 W.Va. 556, 561, 505 S.E.2d 619, 631 (1998), *remanded with directions*, see Lawyer Disciplinary Board v. Kupec (Kupec II), 204 W.Va. 643, 515 S.E.2d 600 (1999). However, in reaching the decision to issue a suspension in this matter, the recommendation of the HPS takes into account this Honorable Court's directive that "the penalty for a misappropriation offense must be consistent with the level of intent by the lawyer and the level of injury." Lawyer Disciplinary Board v. Kupec (Kupec II), 204 W.Va. 643, 515 S.E.2d 600 (1999).

The HPS did not find that Respondent had a dishonest or selfish motive or intentionally set out to misappropriate or convert client funds to his own use. The HPS determined that the mitigating and aggravating factors in this matter are Respondent's substantial experience in the practice of law, his absence of a prior disciplinary record, multiple offenses and remorse. The HPS found that Respondent acted negligently in not properly supervising his staff and instructing them in his obligations to safeguard client funds and then knowingly after he was apprised of the failure to timely remit those funds to the client. It is also without question that Mr. Brumbaugh and the client suffered injury when Respondent did not remit the funds to the client until after the complaint and the same is a serious issue to be considered in issuing an appropriate sanction. Moreover, the evidentiary record reflects that Respondent's failure to properly instruct and supervise his nonlawyer staff was a significant contributor to the violations of the Rules of Professional Conduct in this matter. The recommendation of the HPS properly considered these factors and recommended a sanction that recognized the seriousness of the violations of the Rules of Professional Conduct by suspending Respondent's law license for a period of time but also includes a requirement that Respondent shall participate in additional continuing legal education in law in ethics, law office management and in the management of IOLTA accounts,

to address the issues relating to the oversight of the procedures in Respondent's law practice. The recommended sanction also conforms to this Court's precedent in cases involving comingling of funds, and misuse of funds when coupled with a finding that there was no intent to convert those funds.

In this matter, Respondent committed multiple violations of a number of Rules of Professional Conduct. Respondent clearly failed to properly supervise his non-lawyer staff and he should have known that he was required to address the situation of the job duties of an employee who was experiencing personal issues and was out of the office on a number of occasions for an extended period of time. Moreover, Respondent's inattention to his office staff and his office procedures resulted in the co-mingling and misuse of client funds. Furthermore, due to Respondent's failure, no one in Respondent's office properly dealt with the inquiries of Mr. Brumbaugh and his law firm for nearly a year. Respondent did not advise his non-lawyer staff on the proper use of his law office bank accounts to ensure that their conduct, and his own, complied with his obligations to safeguard his client's property under the Rules of Professional Conduct. Finally, while Respondent eventually paid Mr. Brumbaugh the funds that were due to the client, this action does not negate the misconduct, is not a defense, and in this case should not mitigate any proposed sanction. Syl. pt. 8, Lawyer Disciplinary Board v. Geary M. Battistelli, 206 W.Va. 197, 523 S.E.2d 257 (1999); Syl. pt. 4, Committee on Legal Ethics v. Hess, 186 W.Va. 514, 413 S.E.2d 169 (1991); and Lawyer Disciplinary Board v. Kupec (Kupec I), 202 W.Va. 556, 569-570, 505 S.E.2d 619, 632-633 (1998), *remanded with directions*, see Lawyer Disciplinary Board v. Kupec (Kupec II), 204 W.Va. 643, 515 S.E.2d 600 (1999). Battistelli and Hess note that mitigation of punishment because of restitution must be governed by the facts of the particular case. Kupec I provide that:

Where the restitution has been made after the commencement of disciplinary proceedings, or when made as a matter of expediency under the pressure of the threat of disciplinary proceedings, some courts have refused to consider it a mitigating factor. Kupec I, 515 S.E.2d at 570, citations omitted.

The West Virginia Supreme Court has issued suspensions in cases where an attorney improperly dealt with client property. In Lawyer Disciplinary Board v. Santa Barbara, 229 W.Va. 344, 729 S.E.2d 179 (2012), the Supreme Court dealt with an attorney who failed to diligently handle client matters, failed to communicate with his clients, failed to competently represent his clients, and failed to properly manage his client trust account, and which resulted in a one (1) year suspension. In Mr. Santa Barbara's case, the Court was also faced with multiple complaints and the attorney's depression which was considered by the Court as a mitigating factor to lessen the ultimate sanction to a one (1) year suspension, albeit in consideration of significant mitigation present in that matter.

In Lawyer Disciplinary Board v. Harmon-Schamberger, No. 16-0662 (WV 5/16/17) (unreported), the attorney was issued a three (3) month suspension for violating Rules 1.1, 1.4(a) and (b), 1.5(b), 1.15(a), 1.15(c), 1.16(d), 5.3(b) and 8.4(c) of the Rules of Professional Conduct. The attorney was found to have acted negligently in the management of her law practice by authorizing an improperly trained employee to handle communication with clients, and collect payments from them on her behalf, without any supervision, resulting in the employee's use of funds for personal use. It was noted that the attorney should have recognized the many warning signs presented by the situation and that she could have mitigated damages had she been properly monitoring her employee.

In Lawyer Disciplinary Board v. Hoosier, No. 16-1028 (WV 8/30/17) (unreported), the attorney was found to have violated Rules 1.1; 1.2(a); 1.3; 1.4(a) & (b); 3.2; 1.15(a); 1.15(f); and 7.1(a) in his representation of multiple appointed clients in *habeas* matters. Mr. Hoosier was

found to have co-mingled client funds with personal funds when he deposited client settlements into his operating account and had advertising issues. In Hoosier, the Supreme Court issued a three (3) month suspension to the attorney in addition to the imposition of additional continuing legal education hours in the area of ethics and office management.

In Lawyer Disciplinary Board v. Blyler, 237 W.Va. 325, 787 S.E.2d 596 (2016), the Supreme Court suspended the attorney for sixty (60) days for improperly naming the account in which he had been holding almost \$100,000.00 of client funds in trust. The funds were appropriated from the improperly named account by the State to pay the attorney's back taxes. Id. In that case, the Court also considered the fact that the attorney was dealing with his wife's early onset Alzheimer's disease to be a mitigating factor. Id.

This Court has also issued reprimands in some cases. In Lawyer Disciplinary Board v. Chittum, 225 W.Va. 83, 689 S.E.2d 811 (2010), the Supreme Court issued a reprimand to an attorney found to have co-commingled client funds with his own funds with no intent to convert client funds and no actual injury. The Supreme Court also issued a reprimand to an attorney in Lawyer Disciplinary Board v. Niggemyer, No. 31665 (W.Va. May 11, 2005) (unreported). In that case, Mr. Niggemyer was found to have violated Rules 1.3 (lack of diligence), 1.4(a) (communication, failure to keep the client informed about the status of a case), 1.15(a) (safekeeping funds or property of clients or third parties), 1.15(b) (promptly delivering funds or property to clients or third parties), 1.15(d) (properly maintaining an IOLTA account), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) and 8.4(d) (engaging in conduct prejudicial to the administration of justice) stemming from his mishandling of a client's settlement funds.

Moreover, other jurisdictions have issued suspensions to attorneys when they fail to properly oversee their employees' actions in regard to client funds and the employee commingles or wrongfully uses those monies. In these cases, the lawyers are not necessarily considered to have knowledge that they are dealing improperly with client property if it is proven that they should have known that the conduct was improper and that the client suffered injury or potential injury. *See, e.g. Office of Disciplinary Counsel v. Ball*, 618 N.E.2d 159 (Ohio 1993) (in issuing a six (6) month suspension to attorney who failed to supervise a secretary who misappropriated funds from estate and guardianship accounts over a ten (10) year period, it was noted that while attorney may not have had knowledge of the secretary's misconduct, lawyer had paid little attention to his office's financial matters and failed to set up any safeguards to ensure proper administration of the matters entrusted to him by clients); *In re Bailey*, 821 A.2d 851 (Del. 2003) (in imposing six-month suspension Court agreed with finding that when lawyer instructed bookkeeper to transfer funds from escrow account to operating account, he knew or should have known of firm's financial difficulties due to repeated overdrafts in operating account); *Ky. Bar Association v. Lococo*, 199 S.W.3d 182 (Ky. 2006) (citing Standard 4.12, the court ordered a six month suspension for lawyer whose secretary, without lawyer's consent or knowledge, erroneously wrote and distributed \$10,000 check to client from funds that had been ordered withheld to pay Medicaid and client's doctors); *Attorney Grievance Commission v. Powell*, 614 A.2d 102 (Md. 1992) (citing Standard 4.12, the court imposed indefinite suspension for unintentional misappropriation resulting from disorganization and inefficiency of practice; lawyer claimed three checks were mis-deposited by secretary, who at the time was a temporary employee hired from a temporary secretarial service); and *In re Marshall*, 498 S.E.2d 869 (S.C. 1998) (six-month suspension and restitution for office managers' embezzlement of client trust

funds since lawyer should have noticed the many warning signals and could have mitigated damages had office manager been properly monitored).<sup>16</sup>

A review of the record clearly indicates that the HPS properly considered the evidence, including aggravating and mitigating factors, and made an appropriate recommendation to this Court. For the public to have confidence in our disciplinary and legal system, lawyers, like Respondent, who engage in the mishandling of client funds which were to be held in trust, along with failure to properly supervise their nonlawyer staff, failure to act with diligence and failure to effectively communicate with his client, and otherwise engage in conduct prejudicial to the administration of justice, must be removed from the practice of law for a period of time. Such a sanction is also necessary to deter other lawyers from engaging in similar conduct and to restore the faith of the victim in this case and of the general public in the integrity of the legal profession.

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syl.pt. 3, in part, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984), cited in Committee on Legal Ethics v. Morton, 186 W.Va. 43, 45, 410 S.E.2d 279, 281 (1991). Respondent clearly demonstrated conduct which has fallen below the minimum standard for attorneys, and discipline must be imposed.

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<sup>16</sup> During the hearing, Mr. Brumbaugh indicated that he had reported similar alleged misconduct in at least two other jurisdictions, namely Colorado and New York, which resulted in discipline issued against attorneys. *See People v. Solomon*, 12DJ055 (Colorado, February 22, 2013) (attorney was retained by a bank to handle collections matters, negotiated settlements without client's consent and converted client funds by ignoring his obligation to hold in trust those settlement matters. Attorney also failed to keep funds belonging to client separate from his own, failed to promptly deliver to his client property it was entitled to receive, failed to provide an accounting regarding his interests in the property, and failed to withdraw from the representation. Attorney was found to have violated Rules 1.2(a), 1.15(a), 1.15(b), 1.15(c), 1.16(a)(3), and 8.4(c), and was disbarred).

## V. 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:

1. That Respondent's law license be suspended for a period of three (3) months, with automatic reinstatement of his license to practice law pursuant to the provisions and requirements of Rule 3.31 of the Rules of Lawyer Disciplinary Procedure;<sup>17</sup>
2. That prior to reinstatement, Respondent shall complete an additional nine (9) hours of continuing legal education during the current reporting period of which at least three (3) hours should be in IOLTA accounts. The other six (6) hours should be in the area of ethics and office management;
3. That Respondent must comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure; and
4. Respondent shall be ordered to pay the costs incurred in this disciplinary proceeding pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure and that the same shall be paid prior to reinstatement.

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<sup>17</sup> If the period of suspension is longer, Rule 3.32 of the Rules of Lawyer Disciplinary Procedure applies rather than Rule 3.31. Rule 3.32 requires that "a person whose license to practice law has been ... suspended in this State for a period of more than three months ... shall file a verified petition in the Supreme Court ....."

Accordingly, the Office of Lawyer 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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