

BEFORE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA



In Re: SCOTT A. CURNUTTE, a member of
The West Virginia State Bar

STATEMENT OF CHARGES



To: Scott A. Curnutte, Esquire
Post Office Box 1605
Elkins, West Virginia 26241-1605

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

1. Scott A. Curnutte (hereinafter "Respondent") is a lawyer practicing in Elkins, which is located in Randolph County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on September 23, 1991. 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. 18-01-033

Complaint of Office of Lawyer Disciplinary Counsel

2. Article III(A), Section 2 of the Constitution, By-Laws and Rules and Regulations of the West Virginia State Bar provides, in part, that "[e]very active lawyer shall

disclose to the West Virginia State Bar on or before September 1 of each year (1) whether the lawyer is engaged in the private practice of law; (2) if so engaged, whether the lawyer is currently covered by professional liability insurance ...; (3) if the lawyer is so engaged and not covered by professional liability insurance in the above minimum amounts, whether the lawyer has another form of adequate financial responsibility ...; (4) whether there is any unsatisfied final judgment(s) after appeal against either the lawyer, or any firm or any professional corporation in which the lawyer has practiced, ... and (5) whether the lawyer is exempt from the provisions of this Rule because the lawyer is engaged in the practice of law as a full-time government lawyer or in-house counsel and does not represent clients outside that capacity. It is the duty of every active lawyer to report any changes which occur.”

3. Article III(A), Section 3, of the Constitution, By-Laws and Rules and Regulations of the West Virginia State Bar further provides that “[t]he foregoing shall be certified by each active lawyer admitted to practice law in West Virginia on the State Bar’s Active Membership Fee Notice”
4. For the 2014-2015 fiscal year, Respondent reported and certified to the West Virginia State Bar on his Financial Responsibility Disclosure (hereinafter “FRD”) that he and his law firm, Curnutte Law Offices, were insured under ALPS policy 13019-5.

5. For the 2015-2016 fiscal year, Respondent reported and certified to the West Virginia State Bar on his Financial Responsibility Disclosure (hereinafter "FRD") that he and his law firm, Curnutte Law Offices, were insured under ALPS policy 13019-5.
6. For the 2016-2017 fiscal year, Respondent reported and certified to the West Virginia State Bar on his FRD that he and his law firm, Curnutte Law Offices, were insured under ALPS policy 13019-5.
7. For the 2017-2018 fiscal year, Respondent reported and certified to the West Virginia State Bar on his FRD that he and his law firm, Curnutte Law Offices, were insured under ALPS policy 13019-8.
8. Upon information and belief, ALPS policy 13019-5 lapsed on March 1, 2014, and ALPS policy 13019-8 did not exist.
9. On August 30, 2018, Respondent appeared at the Office of Lawyer Disciplinary Counsel for a sworn statement after a complaint against him was docketed pursuant to Rule 2.4(a) of the Rules of Lawyer Disciplinary Procedure on or about January 29, 2018.
10. Respondent stated that in or about 2014, he became a sole practitioner after two (2) attorney employees left his firm. About a year later, Respondent hired another attorney to work in his firm. However, at the time of his sworn statement, Respondent was a sole practitioner.

11. Respondent stated that only he had access to his West Virginia State Bar portal to input information concerning his FRD information. After his ALPS insurance policy was not renewed in 2014, and until 2016, Respondent stated that he checked the FRD box which contained his lapsed ALPS policy number, indicating that he maintained professional liability insurance.
12. In 2016, when he went to check the FRD box, his old ALPS policy number was not in the box, and Respondent said he created an ALPS policy number and inputted the fictitious number into the FRD box in his attorney portal on the West Virginia State Bar website.
13. Respondent admitted that for the 2015-2016, 2016-2017, and 2017-2018 fiscal years, he knew it was a misrepresentation when he checked the FRD box in the attorney portal on the West Virginia State Bar website indicating that he had professional liability insurance coverage.
14. Respondent also acknowledged that when his now former attorney employee asked him about the insurance policy information so that she could input the required FRD information to comply with her own reporting requirement for fiscal years 2015-2016, 2016-2017, and 2017-2018, Respondent “pulled up [his] own information on the bar site and then just read it off to her is [his] recollection.” Respondent admitted that at the time he provided his attorney employee with the

insurance policy information, he knew that the ALPS policy information contained therein was false.

15. Because Respondent certified to the West Virginia State Bar on his FRD that he was engaged in the private practice of law in the State of West Virginia and that he was currently covered by professional liability insurance for the fiscal years 2015-2016, 2016-2017, and 2017-2018, when he knew his ALPS professional liability insurance policy had lapsed on or about March 1, 2014, and he in fact did not have professional liability insurance, he violated Rule 8.4(c) of the West Virginia Rules of Professional Conduct, as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * *

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

16. Because Respondent was dishonest to his now former attorney employee when he provided her with false information concerning his professional liability insurance coverage, he also violated Rule 8.4(c) of the West Virginia Rules of Professional Conduct, as provided *supra*.

* * *

Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a violation of the Rules of Professional Conduct and has issued this Statement of Charges.

As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 30 days of service of this Statement of Charges by the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

STATEMENT OF CHARGES ORDERED on the 8th day of June, 2019, and
ISSUED this 24th day of June, 2019.



Nicole A. Cofer, Chairperson
Investigative Panel
Lawyer Disciplinary Board