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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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Maynard, Justice, dissenting, in part, and concurring, in part:

I agree with the majority that Lusk's license to practice law should be annulled and that Lusk must pay restitution to Lula Bell Webb, Harold Wolfe, and James Long. However, unlike the majority, I believe Lusk should be charged with paying the costs of this disciplinary procedure. Not only did Lusk neglect the cases of his clients and misappropriate or wrongfully withhold money from his clients, but he also repeatedly failed to respond to inquiries and ethics charges made by clients and disciplinary authorities.

The Hearing Panel Subcommittee determined that the factual allegations contained in the ethics complaint were deemed admitted because Lusk failed to file any response to the formal charges. He also failed to appear before the Hearing Panel Subcommittee during the evidentiary hearing. Moreover, when his case came before this Court, Lusk simply filed a letter stating that he objected to the Subcommittee's recommendation. However, he failed to file a brief in support of his objection.

The majority concludes that Lusk “transgressed all four factors set forth in” Syllabus Point 4 of *Office of Lawyer Disc. Counsel v. Jordan*, 204 W.Va. 495, 513 S.E.2d 722 (1998). After making this conclusion and enumerating aggravating factors which warranted a sanction, the majority, with no explanation whatsoever, excuses Lusk from paying the costs of the disciplinary proceeding. The entire section of the opinion dealing with costs states, “The respondent shall be excused, however, from paying the costs of the disciplinary proceedings.” This statement is repeated, once again with no explanation, in the conclusion. By refusing the Lawyer Disciplinary Board’s request for costs in Lusk’s case, this Court fails to follow its own rules.

The West Virginia Rules of Lawyer Disciplinary Procedure do not provide this Court with discretion in awarding costs in a case such as this. Rule 3.15 specifically states, “When a sanction is imposed, the Hearing Panel Subcommittee or the Court *shall* order the lawyer to reimburse the Lawyer Disciplinary Board for the costs of the disciplinary proceeding unless the Panel or the Court finds the reimbursement will pose an undue hardship on the lawyer.” (Emphasis added). This Court has often said that “[i]t is well established that the word ‘shall,’ in the absence of language in the statute showing a contrary intent on the part of the Legislature, should be afforded a mandatory connotation.” Syllabus Point 1, *Nelson v. W. Va. Public Employees Ins. Bd.*, 171 W.Va. 445, 300 S.E.2d 86 (1982). That holding applies equally to rules promulgated by this Court. “Under article eight, section three of our Constitution, the Supreme Court of Appeals shall have the power to promulgate rules for all

of the courts of the State related to process, practice, and procedure, which shall have the force and effect of law.’ Syl. Pt. 1, *Bennett v. Warner*, 179 W.Va. 742, 372 S.E.2d 920 (1988).” Syllabus Point 7, *Games-Neely v. Real Property*, 211 W.Va. 236, 565 S.E.2d 358 (2002).

The rule is mandatory. As far as I can tell, Lusk did not show undue hardship. He did not even make an attempt to show undue hardship. He simply objected to the Subcommittee’s findings, conclusions, and recommendations in a letter. He did not offer a reason for his objection. He did not afford this Court the courtesy of supporting his position with a brief. There is no evidence that he requested that he not be required to pay costs. Yet this Court broke its own rule by summarily stating, “The respondent shall be excused, however, from paying the costs of the disciplinary proceeding.” I am at a loss to understand the basis for this conclusion.

For the foregoing reasons, I concur in the sanctions which were levied against Lusk. However, I believe he should also pay the costs of this disciplinary proceeding. Therefore, I respectfully dissent from the part of the majority opinion which excuses the payment of costs. I am authorized to state that Justice Davis joins me in this separate opinion.