

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 29th day of November, 2006, the following order was made and entered.

Office of Disciplinary Counsel, Petitioner

vs.) No. 33098

Michael F. Niggemyer, a member of The
West Virginia State Bar, Respondent

On a former day, to-wit, May 11, 2006, came the Office of Disciplinary Counsel (hereinafter “ODC”), by Rachael L. Fletcher, its attorney, and presented to this Court its petition seeking a rule to show cause why respondent Michael F. Niggemyer, a member of the West Virginia State Bar, should not be held in contempt of this Court’s order entered May 11, 2005, as therein set forth. The ODC requested that the law license of the respondent be immediately suspended until such time as the respondent is in full compliance with that order of this Court.

Thereafter, on October 24, 2006, this matter was fully heard upon the oral arguments of the parties. Upon consideration whereof, this Court is of opinion to and doth hereby grant modified relief as hereinafter moulded.

This Court finds as follows: The May 11, 2005, order of this Court reprimanded Mr. Niggemyer for mishandling of client funds and required the following action from Mr. Niggemyer: (1) completion of twelve hours of continuing legal education in ethics and

office management during the following reporting period; (2) submission of quarterly statements for two years to the ODC regarding all receipts on behalf of clients and the disbursements thereof; (3) submission of two years of annual accountings performed by an outside certified public accountant to the ODC; and (4) payment of the costs of the disciplinary proceedings against him. The respondent has now furnished satisfactory evidence of having completed the twelve hours of continuing legal education in ethics and office management. The respondent failed to timely respond to the order of this Court requiring quarterly reports of receipts and disbursements and annual accountings by a certified public accountant, each to be furnished to the ODC.

Accordingly, it is ordered that the respondent shall forthwith employ a certified public accountant to perform the services hereinafter specified and give written notice of such employment to the ODC within sixty days of the entry of this order.

The certified public accountant shall audit the office accounting records of the respondent for two periods of one year each, the first commencing May 1, 2005, and ending April 30, 2006, and the second commencing May 1, 2006, and ending April 30, 2007.

The report of the audit shall set forth the source of all receipts by the respondent in the practice of law during the respective periods by the name of the client, the date of receipt and date of deposit, if any, to either the office operating account or the office trust

account. As to any funds deposited to the respondent's office operating account or otherwise paid over to the respondent, whether drawn from the respondent's trust account or not, the report of the certified public accountant shall state whether there is supporting evidence available to establish the propriety of the payment of such funds to the respondent (a) for legitimate legal expenses incurred by the respondent on behalf of the client, or (b) as earned fees properly due the respondent under the terms of the respondent's employment by the client, or (c) for neither such purpose, such transfer not being justified by any available evidence.

The certified public accountant shall furnish a copy of the report of the audit for the period ending April 30, 2006, to the respondent and to the ODC within sixty days after the date of the accountant's employment by the respondent, and a copy of the report of the audit for the period ending April 30, 2007, within sixty days of the expiration of that period, compliance with which shall be a term and condition of the employment of the certified public accountant.

It is further ordered that the respondent shall deliver to the ODC on or before February 15, 2007, an itemized account of all receipts from clients for the three-month period immediately preceding January 31, 2007, and, on or before May 1, 2007, an itemized account of all receipts from clients for the three-month period immediately preceding April 30, 2007.

The itemized accounts for the periods ending January 31, 2007, and April 30, 2007, shall set forth the name of each client from whom or for whom any funds were received, the account (either office operating account or trust account), if any, into which such funds were deposited, and the date received, date deposited and amount of each separate receipt of such funds. As to funds deposited in the respondent's trust account, the report shall also show the date and amount of any withdrawal of such funds, the purpose of such withdrawal and the person to whom or firm to which such funds were paid. As to funds not deposited in the respondent's trust account, the report shall set forth the name of each client from or for whom the funds were received, the date of receipt and the date of deposit to the respondent's operating account, if any, and the purpose for which the funds were received.

It is further ordered that, pursuant to Rule 3.15, Rules of Lawyer Disciplinary Procedure, the respondent shall pay in full all costs of both of the disciplinary proceedings to the ODC within sixty days from the entry of this order.

The order of this Court in this matter essentially constitutes an extension of the time frame initially contemplated in our May 11, 2005, order. The Court grants this extension to the respondent as a matter of grace and strongly cautions the respondent against further non-compliance or untimely compliance with orders of this Court or unresponsiveness to attempts of the ODC to compel compliance. If the respondent fails to timely comply with

any provision of this order, the ODC is authorized to promptly apply to this Court for a citation of contempt and such other relief as may be deemed necessary.

This order and the time frames set forth herein are effective upon entry.

Service of an attested copy of this order shall constitute sufficient notice of its contents.

A True Copy

Attest: _____


Clerk, Supreme Court of Appeals

It is so ordered.