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

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LAWYER DISCIPLINARY BOARD,

Petitioner,

vs.

No. 22-0123

J. STEVEN HUNTER,

Respondent.

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REPLY BRIEF OF THE LAWYER DISCIPLINARY BOARD

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## I. REPLY TO RESPONDENT'S BRIEF

This matter is before this Honorable Court pursuant to the "Report of the Hearing Panel Subcommittee" filed January 6, 2023. The Hearing Panel Subcommittee (hereinafter "HPS") properly found that the evidence established that Respondent violated Rules 1.5(b), 1.7(a)(1), 1.9(a), 1.15(c), 3.4(c), 4.2, 5.3(c)(1), 5.3(c)(2), 8.4(c) and 8.4(d) of the Rules of Professional Conduct (hereinafter "RPC"), and recommended a one-year suspension.<sup>1</sup> At the hearing, Respondent admitted to the rule violations and offered no evidence to refute any of the charges filed herein. He argued in his brief that he needs time to wind down his practice, sell his office, and that suspension may impact his ability to timely complete "several matters." However, should this Honorable Court adopt the HPS' recommended sanction, Respondent will be given the same amount of time as other lawyers disciplined similarly, and imposition of the recommended sanction would not impact the sale of his office.

The discipline recommended by the HPS was based upon Respondent's intentional and knowing conduct and the totality of the circumstances surrounding the situation. Respondent violated ten (10) separate Rules of the Rules of Professional Conduct, which included disregarding multiple court orders and taking money from an elderly court-ordered protected person and refusing to return it until after the disciplinary action had commenced and he was threatened with contempt charges.

In his brief, Respondent concurred with "Justice Wooten's description in Schillace : '...the draconian penalty imposed on the respondent, Gregory Schillace – a penalty which is, in practical

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<sup>1</sup> The HPS also recommended an additional 9 hours of continuing legal education (3 hours in the area of IOLTA training, and 6 hours in ethics and office management) and, if successfully reinstated to the practice of law after petitioning for reinstatement, he shall be placed on one-year of supervised probation after reinstatement, shall pay costs of the disciplinary proceeding (Rule 3.15), and compliance with the mandates in Rule 3.28 of the Rules of Lawyer Disciplinary Procedure.

effect, the death penalty for this solo practitioner's career'," and asked for a more lenient sanction than was recommended by the HPS. *Lawyer Disciplinary Board v. Schillace*, \_\_\_ W.Va. \_\_\_, 885 S.E.2d 611 (2022). Although Respondent failed to note that Justice Wooten's statement was from the dissent in *Schillace*, and his situation is easily distinguishable from the circumstances in *Schillace*. Justice Wooten agreed with the majority that Schillace had committed serious offenses and required discipline. However, Schillace provided medical evidence of ongoing mental health issues and proof that he was actively participating in treatment with positive results, and Justice Wooten found this to be compelling evidence of substantial mitigation. Respondent never alleged nor provided any evidence of mental health issues, nor of any other issue that would constitute a substantial mitigating factor. Further, Justice Wooten discussed several disciplinary cases involving years-long suspensions, and noted commonality with all of them, that the aggravating factors far outweighed the mitigating factors, but he found that Schillace's mitigating factors far outweighed the aggravating factors therein.

In Respondent's matter, the HPS found three mitigating factors: full and free disclosure to disciplinary board or cooperative attitude toward proceedings; character or reputation; and, remorse. With regard to cooperation toward disciplinary proceedings, the *ABA Model Standards for Imposing Lawyer Sanctions* states that because "most courts have established that lawyers have a duty to cooperate during a disciplinary proceeding, they often do not find mitigation under this Standard unless the lawyer's effort is above and beyond that normally required." On multiple occasions during ODC's investigation of the complaint, Respondent failed to respond timely to requests for information, requiring ODC to send follow-up requests via certified mail. [ODC Ex. 13 at 576; and ODC Ex. 15 at 582]. Although Respondent eventually responded, he failed to provide the information requested. [ODC Ex. 13 at 576; ODC Ex. 14 at 579]. For example, ODC

requested a copy of the reimbursement check to provide information of the bank account used for reimbursement to determine if the check was paid from the IOLTA account. Respondent provided only a copy of a handwritten receipt, which did not include the bank account information. ODC ultimately had to use alternative means to obtain a copy of the check, which showed that the reimbursement had been paid from the IOLTA account. This was problematic because Respondent has admitted that the initial \$5,000.00 had never been deposited into the IOLTA account, meaning that someone else's money was used for reimbursement. [ODC Ex. 14 at 579-80; ODC Ex. 21]. All things considered, only minimal weight should be given to cooperation as a mitigating factor.

Regarding remorse as a mitigating factor, Respondent only expressed remorse after the charges were filed herein, despite having had many opportunities throughout the lengthy litigation in the underlying claim and during the investigation by ODC. His glib responses to ODC prior to the issuance of the charges herein reveal a lack of remorse in the wrongful taking of Mr. Peters' money until Respondent realized there was potential personal impact. [ODC Ex. 7 at 339-340]. He was indignant in his early responses to the complaint, describing how amused Mrs. Hunter was that Mr. Peters made unauthorized financial transactions at Kroger, how the unauthorized Discover withdrawal was "[p]robably the most fun they had," and that "the man at Discover was enjoying the whole scenario too." [ODC Ex. 7 at 339-340]. This response is to a question regarding a transaction that had been determined by the Court to be financial exploitation.

Likewise with character, the only evidence that was submitted of Respondent's character was testimony he provided about himself, unlike in *Schillace* where United States Magistrate Michael J. Aloï testified on his behalf. Accordingly, the above mitigating factors should be given due weight and would not qualify as "substantial" mitigating factors, nor would they outweigh Respondent's substantial aggravating factors determined by HPS, which include: 1) vulnerability

of victim; 2) delay in rectifying misconduct; 3) prior discipline; 4) pattern of misconduct; and 5) substantial experience in the practice of law.

Additionally, Justice Wooten noted that in the other years-long suspension disciplinary cases he reviewed, they often dealt with commingling or theft of client funds, but that Schillace's actions did not involve financial gain. However, Respondent clearly experienced financial gain at the expense of his vulnerable client. Respondent admitted to wrongfully taking \$5,000.00 from his client and repeatedly failing to return it after being ordered to do so by the Court, and was even using the wrongfully taken money as a tool in negotiations with Complainant's counsel. [Hrg. Tr. at 286; ODC Ex. 14 at 580].

In his brief, Respondent denies acting in an intentional and knowing manner, however, the record herein demonstrates that Respondent's actions were intentional with regard to his failure to comply with the court orders and failure to reimburse the money. It is a cornerstone of the judicial system that courts speak through orders and lawyers are to abide by them, and Respondent was well aware of the court's orders, yet intentionally chose to disregard them. Respondent's actions were knowing with regard to his failure to execute written fee agreements, his general failure to stay abreast of rule and law changes, his continued representation of Ms. Bordonaro after the Court determined a conflict existed, his delegation of all financial duties to Mrs. Hunter without properly supervising or educating her, and his failure to mitigate or remediate the consequences of Mrs. Hunter's actions. There is no evidence to the contrary.

Lastly, in his brief, Respondent stated that he "had hoped to retire, but this matter has prevented that. As the Office of Disciplinary Counsel told me that I would have to agree to disbarment to do so. I do not want to die with that on my record."<sup>2</sup> That statement is patently

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<sup>2</sup> Brief of J. Steven Hunter, Finding of Fact 12, page. 5.

untrue. A few days after Respondent filed his objection to the HPS Recommendations on February 1, 2023, Respondent called the undersigned and informed her that his mother-in-law had passed and he was planning on retiring to take care of her rather large estate which consisted of hundreds of acres. The undersigned offered condolences. Respondent then inquired as to whether his retirement would end the disciplinary action and we discussed that he had just filed an appeal which would remain pending. We also discussed that once charges are issued in disciplinary matters, consent to disbarment and death are just about the only mechanisms that stop the process. Disciplinary Counsel absolutely did not tell Respondent he could not retire during the pendency of this litigation.

## **II. CONCLUSION**

In reaching its recommendation as to sanctions, the Hearing Panel Subcommittee considered the evidence, the facts and recommended sanction, as well as the aggravating and mitigating factors. Respondent's argument that he is entitled to lesser sanction than that recommended because he needs time to wind down his practice and sell his office is not compelling given the severity of his conduct and the lack of safeguards in place in his practice to prevent similar situations recurring. The evidence demonstrates that Mrs. Hunter provides substantial assistance in the running of Respondent's office and that she is not responsive to Mr. Hunter's direction. Additionally, Mr. Hunter's disregard for court orders and his general conduct toward a vulnerable person shows a lack of respect for his clients, the court system and the Rules of Professional Conduct.

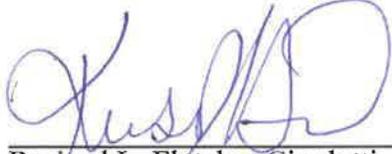
Judge Irons testified at the hearing that "the whole thing was to stop people from taking Mr. Peters' money", yet Respondent and Mrs. Hunter engaged in the very activity that the Guardian/Conservator proceedings were meant to safeguard against. [Hrg. Tr. at 115]. Upon

review of the record, Respondent's argument that his "moral obligations" overtook his ethical obligations rings hollow. It is impossible to reconcile how taking advantage of a vulnerable person fulfills a moral obligation. Although Respondent argued he was merely advocating for someone he felt was being taken advantage of, the facts show that Respondent is the one who took advantage of Mr. Peters.

Accordingly, the Office of Lawyer Disciplinary Counsel urges that this Honorable Court uphold the sanctions recommended by the Hearing Panel Subcommittee in Case No. 22-0123. To wit:

- A. That Respondent's law license be suspended for a period of one (1) year pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure;
- B. That Respondent complete an additional nine (9) hours of continuing legal education prior to reinstatement, during the current reporting period, three (3) hours of which should be in IOLTA accounts and the other six (6) hours in the area of ethics and office management;
- C. That Respondent must comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure;
- D. That Respondent be permitted to Petition the Court for reinstatement following one (1) year suspension pursuant to Rule 3.32 provided the above sanctions are satisfied;
- E. That following Reinstatement, if any, the Respondent shall be placed on one (1) year supervised probation; and
- F. That Respondent be ordered to pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

*Respectfully submitted,  
The Lawyer Disciplinary Board  
By Counsel*



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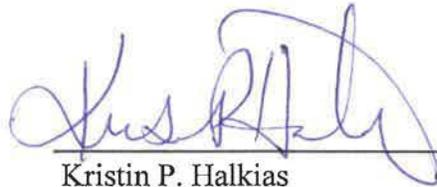
**CERTIFICATE OF SERVICE**

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This is to certify that I, Kristin P. Halkias, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 18<sup>th</sup> day of May, 2023, served a true copy of the foregoing **“Reply Brief of the Lawyer Disciplinary Board”** upon Respondent J. Steven Hunter by mailing the same via United States Mail with sufficient postage, to the following address:

J. Steven Hunter, Esquire  
921 Court Street North  
Lewisburg, West Virginia 24901



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Kristin P. Halkias