

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

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**STATE OF WEST VIRGINIA ex rel.  
OFFICE OF LAWYER DISCIPLINARY COUNSEL,  
Petitioner,**

v.

Supreme Court No. \_\_\_\_\_

**PHILLIP S. ISNER, A MEMBER  
OF THE WEST VIRGINIA STATE BAR,  
Respondent.**

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**PETITION FOR A RULE TO SHOW CAUSE AS TO WHY  
RESPONDENT SHOULD NOT BE HELD IN CONTEMPT**

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## **I. QUESTION PRESENTED**

Whether an attorney should be held in contempt and suspended for his failure to be in compliance with this Honorable Court's Order?

## **II. STATEMENT OF THE CASE**

On or about June 9, 2023, the Court entered an Order publicly reprimanded Respondent. It was further Ordered that (2) Respondent's practice be supervised for a period of two years by an attorney agreed upon by the Office of Lawyer Disciplinary Counsel (ODC) and respondent, that Respondent meet with his supervising attorney every two weeks with the goal of the supervised practice being to improve the quality and effectiveness of his law practice to the extent that his sanctioned behavior is not likely to recur; (3) Respondent complete an additional six (6) hours of continuing legal education in the area of ethics and law office management within twelve (12) months from the date of the Court's Order; and (4) Respondent pay the costs of the disciplinary proceeding in the amount of \$1,596.48 pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure. [Appendix p. 1-2, Exhibit 1]

On or about July 10, 2023, Respondent was sent an email attaching a draft "Agreement with Supervising Lawyer and Respondent. The email further inquired whether Respondent needed a payment plan for the reimbursement of the costs of the disciplinary proceedings. [Appendix p. 3, Exhibit 2]

On or about August 8, 2023, an email was sent to Respondent and his supervising attorney, Timothy Prentice, Esquire, attaching the executed "Agreement with Supervising Lawyer and Respondent." [Appendix p. 4, Exhibit 3]

Mr. Prentice submitted two (2) supervision reports on or about September 7, 2023 and October 24, 2023. On or about November 28, 2023, an email was sent to Respondent and Mr. Prentice indicating that no supervision report had been received by ODC and requested that a supervision report be submitted by December 5, 2023. [Appendix p. 5, Exhibit 4]

On or about December 6, 2023, Respondent sent an email attaching a copy of the initial supervision report that was previously submitted on or about September 7, 2023. [Appendix p. 6-7, Exhibit 5]

Thereafter, on or about December 19, 2023, an email was sent to Respondent memorializing a telephone conversation ODC staff had with Respondent regarding the costs of the disciplinary proceedings. [Appendix p. 8, Exhibit 6]

On or about February 12, 2024, an email was sent to Mr. Prentice advising that supervision reports for January and February had not been received [Appendix p. 9, Exhibit 7]

After receiving no response, on or about March 11, 2024, another email was sent to Mr. Prentice requesting that supervision reports for January, February, and March be submitted by March 28, 2024. [Appendix p. 10, Exhibit 8] Again, no response was received.

On or about March 25, 2024, Respondent made a payment toward the costs of the disciplinary proceedings in the amount of \$500.00. [Appendix p. 11, Exhibit 9]

On or about April 8, 2024, an email was sent to Respondent and Mr. Prentice that ODC had not received a supervision report since November of 2023. Respondent was advised that he was not in compliance with the Court's June 9, 2024, order and was directed to provide the outstanding supervision reports by April 10, 2024. [Appendix p. 12, Exhibit 10]

Although it is noted that Respondent has until on or about June 9, 2024, as of the filing of this petition, Respondent has not provided any verification that he has completed the additional six (6) hours of continuing legal education in ethics and law office management.

As of the date of the filing of this instant matter, despite repeated requests for compliance Respondent is not in compliance with the Court's Order. Respondent has not submitted a monthly supervision report since November of 2023. Despite the March 25, 2024, payment, Respondent owes \$1,096.48 for the disciplinary proceedings and will not communicate with ODC about paying the outstanding balance or entering into an appropriate payment plan.

### **III. SUMMARY OF ARGUMENT**

Respondent has failed to comply with provisions of the Order of this Honorable Court and has failed to respond to Chief Lawyer Disciplinary Counsel's attempts to address the issue. Respondent should be held in contempt and immediately suspended until he fully complies with this Court's Orders.

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

The Office of Lawyer Disciplinary Counsel does not request oral argument in this matter pursuant to Rule 19. The issues raised do not address any new issues of law pursuant to Rule 20 of the Rules of Appellate Procedure. Further, this case does not involve a novel issue or a substantial question of law which would allow a memorandum decision under Rule 21 of the Rules of Appellate Procedure.

## V. ARGUMENT

### A. STANDARD OF REVIEW

The Supreme Court is the final arbiter of formal legal ethics 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). In addition, discipline must serve as both instruction on the standards for ethical conduct and as a deterrent against similar misconduct to other attorneys. In Syllabus Point 3 of Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987), the Court stated:

In deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession.

Further, “[t]his Court views compliance with its orders relating to the practice of law to be among a lawyer’s highest professional responsibilities[.]” Committee of Legal Ethics of the West Virginia Bar v. Farber, 191 W.Va. 667, 669, 447 S.E.2d 602, 604 (1994). Thus, “[w]hen this Court acts within its jurisdiction, its orders shall be promptly obeyed, or contempt is a proper sanction.” Syllabus point 1, United Mine Workers of America v. Faerber, 179 W.Va. 73, 365 S.E.2d 353 (1986). “This Court possesses the power to punish a party for contempt of an order executed by this Court.” Syllabus point 4, State ex rel. Walker v. Giardina, 170 W.Va. 483, 294 S.E.2d 900 (1982).

Contempt is not an appropriate sanction in cases where a respondent has no ability to purge themselves of the contempt. In re Yoho, 171 W.Va. 625, 631, 301 S.E.2d 581, 586 (1983).



Further, Respondent bears the burden of proof in showing that he/she cannot comply with this Court's prior orders. State ex rel. Zirkle v. Fox, 203 W.Va. 668, 672, 510 S.E.2d 502, 506 (1998); In re Frieda Q, 230 W.Va. 652, 663, 742 S.E.2d 68, 79 (2013).

**B. RESPONDENT HAS FAILED TO COMPLY WITH THIS COURT'S ORDER.**

This Court has previously suspended an attorney for failure to comply with this Court's orders after receiving a reprimand. Office of Disciplinary Counsel v. Michael F. Niggemyer, 221 W.Va. 59, 650 S.E.2d 158 (2007). This Court stated that "[a] lawyer's failure to comply with an order of this Court is a serious breach of his/her professional responsibility." Id. at 65, 164. Further, the attorney "blatantly disregarded this Court's order and refused to cooperate with the ODC's efforts to compel his complainant [ . . . ] until the wee morning hours of the day on which this Court was scheduled to hear argument in the instant matter." Office of Disciplinary Counsel v. Michael F. Niggemyer, 221 W.Va. 59, 64, 650 S.E.2d 158, 163 (2007). The attorney in that case failed to pay costs of the disciplinary matter along with failure to employ a certified public accountant and failure to provide the Office of Lawyer Disciplinary Counsel with itemized account of all receipts of client funds. This Court "immediately and indefinitely suspended the attorney's license to practice law in this State until such time as he has demonstrated full compliance with said orders and our opinion herein." Id. The Court also noted that the previous orders in that attorney's case remained in "full force and effect." Id.

This Court also suspended the attorney in State ex rel. Office of Disciplinary Counsel v. Price, (W.Va. Sup. Ct. No. 14-0899, Feb. 10, 2015) (memorandum decision) for failing to comply with this Court's orders. The Court in that case noted that the attorney was informed in that the rule to show cause could be mooted by full compliance with the Court's order, but the

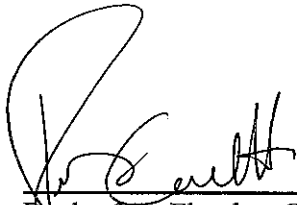
attorney failed to file anything with the Court to demonstrate her compliance or to prove that the attorney could not comply with the Orders. Id.

Respondent should be found in contempt, and suspended immediately and indefinitely until he has demonstrated full compliance with this Court's Order.

## VI. CONCLUSION

Petitioner has shown that Respondent has failed to comply with this Court's Order. As such, the Office of Lawyer Disciplinary Counsel respectfully requests that this Honorable Court issue a Rule to Show Cause as to why Respondent should not be found in contempt of this Honorable Court's Orders and why Respondent should be suspended immediately and indefinitely until he has demonstrated full compliance with this Court's Orders.

THE OFFICE OF LAWYER DISCIPLINARY COUNSEL  
By Counsel,



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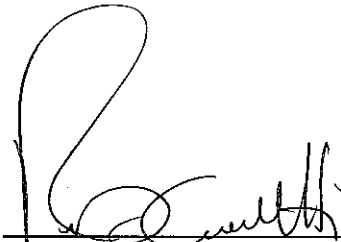
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**CERTIFICATE OF SERVICE**

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This is to certify that I, **Rachael L. Fletcher Cipoletti**, Chief Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 10<sup>th</sup> day of May, 2024, served a true copy of the foregoing "**PETITION FOR A RULE TO SHOW CAUSE AS TO WHY RESPONDENT SHOULD NOT BE HELD IN CONTEMPT**" upon Respondent Phillip S. Isner, by mailing the same via United States Mail, with sufficient postage, and electronically via File & Serve Xpress, to the following address:

Phillip S. Isner, Esquire  
Post Office Box 1878  
Elkins, West Virginia 26241  
[phil@isnerlaw.com](mailto:phil@isnerlaw.com)



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Rachael L. Fletcher Cipoletti