

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Re: Vickie L. Hylton, a member of
The West Virginia State Bar

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Supreme Court No.: 24-122
I.D. No.: 23-03-056

REPORT OF HEARING PANEL SUBCOMMITTEE

I. PROCEDURAL HISTORY

Formal charges were filed against Vickie L. Hylton (hereinafter "Respondent") with the Clerk of the Supreme Court of Appeals on or about March 5, 2024, and served upon Respondent via certified mail by the Clerk on March 11, 2024. Chief Lawyer Disciplinary Counsel filed her mandatory discovery on or about April 1, 2024. Respondent filed her Answer to the Statement of Charges on or about April 10, 2024. Respondent failed to provide her mandatory discovery, which was due on or before May 1, 2024. Chief Lawyer Disciplinary Counsel then filed a Motion to Exclude Testimony of Witnesses And/or Documentary Evidence or Testimony of Mitigating Factors on May 20, 2024. The Hearing Panel Subcommittee granted this motion at the telephonic prehearing held on May 31, 2024.

Thereafter, this matter proceeded to hearing in Charleston, West Virginia, on June 17, 2024. The Hearing Panel Subcommittee was comprised of Richard A. Pill, Esquire, Chairperson, Stephen M. Mathias, Esquire, and Mark Blankenship, Layperson. Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, appeared on behalf of the Office of Lawyer Disciplinary Counsel. Timothy P. Lupardus appeared on behalf of Respondent, who also appeared. The Hearing Panel Subcommittee heard testimony from Respondent. In addition, ODC Exhibits 1-11 and Joint Exhibit 1 were admitted into evidence.

Based upon the evidence and the record, the Office of Lawyer Disciplinary Counsel submits to the Hearing Panel Subcommittee of the Lawyer Disciplinary Board the following Stipulated Findings of Fact, Admitted Violations of the Rules of Professional Conduct, and Jointly Recommended Sanctions regarding the final disposition of this matter.

III. STIPULATED FINDINGS OF FACT

1. Respondent is a lawyer who practices in and around Beaver, which is located in Raleigh County, West Virginia. Respondent was admitted to The West Virginia State Bar October 6, 2005. 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.
2. This complaint was opened by the Office of Lawyer Disciplinary Counsel (ODC) against Respondent, a licensed member of the West Virginia State Bar pursuant to Rule 2.4 of the Rules of Lawyer Disciplinary Procedure after ODC received notice dated January 17, 2023, from Chase Bank indicating that Respondent's IOLTA account had been overdrawn in the amount of \$565.39.
3. By letter dated February 13, 2023, ODC sent Respondent a letter directing her to file a response to the complaint within twenty (20) days of its receipt.
4. By letter dated February 17, 2023, Respondent filed a timely response and stated that at the time of the overdraft, there were "no client funds in her IOLTA account" and the "account balance was zero."
5. In verified response to ODC, Respondent further stated that she keeps all of her blank checks in one secure location in her office. Respondent stated that when she removed a

check to pay an office bill, she inadvertently took a check for her IOLTA account rather than her operating account.

6. In her verified response to ODC, Respondent stated she paid the bill on January 10, 2023, in the amount of \$565.39. She further stated later that evening when she was working on some accounting, she noticed the check had been written on the wrong account.
7. In her verified response to ODC, Respondent further stated that the following morning, Respondent notified the entity to whom she had written the check and informed them of the error. Respondent stated she advised she would either pay the bill with cash or with another check from her operating account. Respondent stated she was advised to deposit that amount in the IOLTA account so that the check would clear.
8. In her verified response to ODC, Respondent finally stated that she no longer handled client funds and intended to close her IOLTA account and destroy any remaining checks.
9. On or about April 6, 2023, a confidential investigative subpoena *duces tecum* was signed and served upon JPMorgan Chase Bank that requested production of any banking records related to Respondent's operating, trust or IOLTA accounts from January of 2022.
10. The balance in Respondent's IOLTA account on January 1, 2022, was \$29,143.22. There were deposits made in the amount of \$11,223.74. There were two checks written out of the account in the amount of \$5,394.00, one made payable to "CSED" with the memo line referencing "Anthony Lyle Hylton 400136" in the amount of \$394.00 and the second made payable to "Vickie Hylton" in the amount \$5,000.00.
11. The balance in Respondent's IOLTA account on February 1, 2022, was \$34,969.87. There were two checks written out of the account in the amount of \$5,394.00, one made payable to "CSED" with the memo line referencing "Anthony Lyle Hylton 400136" in

the amount of \$394.00 and the second made payable to "Vickie Hylton" in the amount \$5,000.00.

12. The balance in Respondent's IOLTA account on March 1, 2022, was \$29,575.87. There were deposits made in the amount of \$2,580.18. One check from the State of WV in the amount of \$1,177.95 and the other from Progressive Insurance in the amount of \$1,400.00, both made payable to Hylton Law Office. There were three checks written out of the account in the amount of \$5,788.00, two made payable to "CSED" with the memo line referencing "Anthony Lyle Hylton 400136" in the amounts of \$394.00 and the second made payable to "Vickie Hylton" in the amount \$5,000.00.
13. The balance in Respondent's IOLTA account on April 1, 2022, was \$26,365.82. There was one check written out of the account made payable to "Vickie Hylton" in the amount \$5,000.00.
14. The balance in Respondent's IOLTA account on May 1, 2022, was \$21,365.82. There was a deposit made in the amount of \$720.00 written on the account of Pearlene Pauley made payable to Hylton Law Office. There was one check written on the account made payable to "CSED" with the memo line referencing "Anthony Lyle Hylton 400136" in the amounts of \$394.00.
15. The balance in Respondent's IOLTA account on June 1, 2022, was \$21,691.82. There were deposits made in the amount of \$760.00 with the memo line stating, "Howard Hearing" and a deposit in the amount of \$820.00 with the memo line stating "guardian/conservator", both made payable to Hylton Law Office. There was one check written out of the account in the amount made payable to "CSED" with the memo line referencing "Anthony Lyle Hylton 400136" in the amount of \$394.00.

16. The balance in Respondent's IOLTA account on July 1, 2022, was \$22,877.82. There were deposits made in the amount of \$2,100.00 from Black Flag Tattoo, LLC¹ with the memo line stating, "child support" made payable to Hylton Law Office. There was one check written out of the account in the amount made payable to "CSED" with the memo line referencing "Anthony Lyle Hylton 400136" in the amount of \$394.00 and the second made payable to "Vickie Hylton" in the amount \$7,500.00.
17. The balance in Respondent's IOLTA account on August 1, 2022, was \$17,063.82. There was one check written out of the account in the amount made payable to "CSED" with the memo line referencing "Anthony Lyle Hylton 400136" in the amount of \$394.00.
18. The balance in Respondent's IOLTA account on September 1, 2022, was \$16,689.82. There were two checks written out of the account in the amount both made payable to "CSED" with the memo line referencing "Anthony Lyle Hylton 400136" in the amount of \$394.00.
19. The balance in Respondent's IOLTA account on October 1, 2022, was \$15,901.82.
20. The balance in Respondent's IOLTA account on November 1, 2022, was \$15,901.82. There were two checks written out of the account in the amount of \$5,394.00, one made payable to "CSED" with the memo line referencing "Anthony Lyle Hylton 400136" in the amounts of \$394.00 and the second made payable to "Vickie Hylton" in the amount \$5,000.00. Anthony Lyle Hylton is the Respondent's son who could testify that he sent money to his mother so that he could pay his child support for him, and would further testify that he never viewed this as an attorney client relationship but instead viewed the interaction as being strictly between a mother and son.

¹ The registered agent for this business is Anthony L. Hylton.

21. The balance in Respondent's IOLTA account on December 1, 2022, was \$10,507.82. There were two checks written out of the account in the amount of \$8,500.00, one made payable to "Vickie Hylton" in the amount of \$5,000.00 and the second made payable to "Vickie Hylton" in the amount \$3,500.00.
22. A review of Respondent's IOLTA account records indicates that a deposit was made on January 3, 2023, of a check dated December 20, 2022, made payable to Hylton Law Office, PLLC in the amount of \$3,080.00.
23. By way of relevant background, on or about April 22, 2022, Respondent was appointed by the Court as guardian *ad litem* in a petition filed seeking guardianship and conservatorship for a protected person. The Court ordered that her fees be paid by the Estate and that her billable rate was \$200.00 per hour. [Circuit Court of Raleigh County, West Virginia, Case No. 2022-G41-0008] The deposit on January 3, 2023, in the amount of \$3,080.00 was a check from the Petitioner in those guardianship proceedings.
24. After that deposit, the balance in the IOLTA account was \$5,087.82.
25. On January 6, 2023, an electronic withdrawal was made from Respondent's IOLTA in the amount \$5,050.00 payable to Spinnaker Resorts, which upon information and belief is a resort located in Hilton Head, South Carolina.
26. On January 10, 2023, a check was issued from the IOLTA account made payable to Sheriff of Fayette County in the amount of \$565.39, and because of the prior electronic withdrawal to Spinnaker Resorts there was insufficient funds in the IOLTA.
27. The check written from the IOLTA account to the Sheriff of Fayette County was for Respondent's personal property taxes for the tax year 2022.

28. On or about January 17, 2023, a check in the amount of \$700.00 was deposited into the IOLTA account from Respondent's law office account to cover the \$565.39 check made payable to the Sheriff of Fayette County, West Virginia.

II. ADMISSION VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT

29. Respondent admitted to and stipulated to the improper use of the IOLTA account, established pursuant to Rule 1.15(f) of the Rules of Professional Conduct and State Bar Administrative Rule 10. Respondent deposited personal funds and commingled her personal funds in the IOLTA account in violation of Rule 1.15(b) of the Rules of Professional Conduct. Respondent's continued improper usage of the IOLTA account for her own personal use ultimately resulted in an overdraft by use of her commingled personal funds maintained in the IOLTA but these were not funds that belonged to a client or a third person.
30. Respondent admitted to and stipulated that she knowingly made false statements of material facts to ODC in the investigation of this disciplinary matter in violation of Rule 8.1(a) of the Rules of Professional Conduct.

III. DISCUSSION

The Supreme Court of Appeals of West Virginia has long recognized that attorney disciplinary proceedings are not designed solely to punish the attorney, but also to protect the public, to reassure the public as to the reliability and integrity of attorneys, and to safeguard its interests in the administration of justice. Lawyer Disciplinary Board v. Taylor, 192 W.Va. 139, 451 S.E.2d 440 (1994). Factors to be considered in imposing appropriate sanctions are found in Rule 3.16 of the Rules of Lawyer Disciplinary Procedure. These factors consist of: (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the

profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors. *See also*, Syl. Pt. 4, Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d 722 (1998).

A. Nature of the Duty Owed.

In determining the nature of the ethical duty violated, the standards assume that the most important ethical duties are those obligations which a lawyer owes to clients. In addition to duties owed to clients, the lawyer also owes duties to the general public. Members of the public are entitled to expect lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty or interference with the administration of justice. Lawyers also owe duties to the legal system. Lawyers are officers of the court and must abide by the rules of substance and procedure which shape the administration of justice. Finally, lawyers owe duties to the legal profession. Unlike the obligations mentioned above, these duties are not inherent in the relationship between the lawyer and the community. These duties do not concern the lawyer's basic responsibilities in representing clients, serving as an officer of the court, or maintaining the public trust, but include other duties relating to the profession.

The parties stipulated that Respondent's conduct violated a duty to the legal system and to the profession.

B. Mental State.

The most culpable mental state is that of intent when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant

circumstances of his conduct, both without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. ABA Model Standards for Imposing Lawyer Sanctions, Definitions (1992).

The parties stipulated that Respondent's mental state in the improper usage of her IOLTA account was and her statements to ODC in the investigation of the matter were knowingly.

C. The amount of Injury or Potential Injury.

Injury is harm to a client, the public, the legal system, or the legal profession which results from a lawyer's misconduct. The level of injury can range from "serious" injury to "little or no" injury. A reference to "injury" alone indicates any level of injury greater than "little or no" injury. "Potential injury" is the harm to a client, the public, the legal system or legal profession that is reasonably foreseeable at the time of the lawyer's misconduct and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. ABA Model Standards for Imposing Lawyer Sanctions, Definitions (1992).

The parties stipulated that there is no known injury, but acknowledged the potential for injury for the improper use of bank accounts associated with the practice of law is great.

D. Mitigating and Aggravating Factors.

The parties agree that the factors in mitigation outweigh those in aggravation. The parties agreed that the following mitigating factors are present in these matters: (1) absence of a prior disciplinary record and (2) remorse and acceptance of responsibility. The parties agreed that (1) Respondent's experience in the practice of law is the only factor in aggravation.

IV. RECOMMENDED DISCIPLINE

In light of all of the circumstances, the Hearing Panel Subcommittee adopts the joint recommendation as it relates to sanction and recommends to the Supreme Court of Appeals of West Virginia:

1. That Respondent be admonished;
2. That Respondent cease the improper use of the IOLTA account and provide verification that all accounts associated with her law practice are in compliance with the Rules of Professional Conduct, the State Bar By-laws, and any other relevant laws;
3. That Respondent undergo six (6) additional hours of continuing legal education in the area of law office management; and
4. That Respondent shall pay costs of this disciplinary proceeding to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Richard A. Pill

Richard A. Pill, Esquire
Chair, Hearing Panel Subcommittee

Date:

September 24, 2024

Stephen M. Mathias
Stephen M. Mathias, Esquire
Hearing Panel Subcommittee

Date:

9/30/24

Mark Blankenship
Mark Blankenship
Hearing Panel Subcommittee

Date:

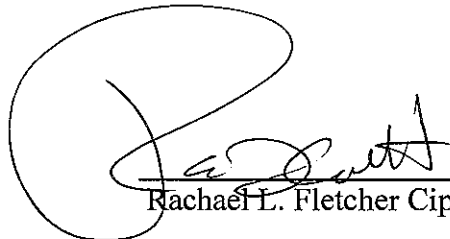
9/30/24

CERTIFICATE OF SERVICE

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 1st day of October, 2024, served a true copy of the foregoing "**Report of the Hearing Panel Subcommittee**" upon Timothy P. Lupardus, counsel for Respondent Vickie L. Hylton, by mailing the same via Certified United States Mail, with sufficient postage, and electronically via File & Serve Xpress, to the following address:

Timothy P. Lupardus, Esquire
Post Office Box 1680
Pineville, West Virginia 24874
office@luparduslaw.com

Notice to Respondent: for the purpose of filing a consent or objection hereto, pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary Procedure, either party shall have thirty (30) days from today's date to file the same.



Rachael L. Fletcher Cipoletti