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

LAWYER DISCIPLINARY BOARD,

Petitioner,

vs. **No. 24-122**

VICKIE L. HYLTON,

Respondent.

BRIEF OF THE LAWYER DISCIPLINARY BOARD

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I. STATEMENT OF THE CASE

A. Nature of the Proceedings and 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 on or about March 11, 2024. Chief Disciplinary Counsel filed her mandatory discovery on or about April 2, 2024. Respondent, by and through counsel, filed her response to the Statement of Charges on or about April 10, 2024. Respondent failed to file her mandatory discovery, and Chief Disciplinary Counsel filed a "Motion to Exclude Testimony of Witnesses and Documentary Evidence or Testimony of Mitigating Factors." The Hearing Panel Subcommittee granted the Motion at the May 31, 2024, Prehearing.

Thereafter, this matter proceeded to final hearing in Charleston, West Virginia, on June 17, 2024. The Hearing Panel Subcommittee (hereinafter "HPS") 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 (hereinafter "ODC"). Attorney Timothy P. Lupardus, Esquire, appeared on behalf of Respondent, who also appeared, in person. The Hearing Panel Subcommittee heard testimony from Respondent. In addition, ODC Exhibits 1-11 were admitted into evidence as well as Joint Exhibit 1. Chief Disciplinary Counsel submitted "Chief Lawyer Disciplinary Counsel's Stipulated Findings of Fact, Admitted Violations of the Rules of Professional Conduct and Recommended Sanctions" on or about August 6, 2024. Respondent did not file a post hearing pleading.

Thereafter, on or about September 30, 2024, the Hearing Panel Subcommittee (hereinafter "HPS") made the following recommendations:

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 the area of law office management; and
4. That Respondent be ordered to pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Thereafter, on or about October 22, 2024, Chief Lawyer Disciplinary Counsel filed her Consent of ODC to the Report of the Hearing Panel Subcommittee.

By Order entered January 13, 2025, this Honorable Court, after due consideration, did not concur with the recommendation of the Hearing Panel Subcommittee and established a briefing schedule and set this matter for oral argument.

B. Stipulated Findings of Fact and Admitted Violations of the Rules of Professional Conduct.

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 on 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.

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.

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. 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."

In her 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. 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.

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. 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.

On or about April 6, 2023, a confidential investigative subpoena *duces decum* 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.

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. 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.

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.

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. 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.

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.

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, LLC[1] 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.

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.

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. The balance in Respondent's IOLTA account on October 1, 2022, was $15,901.82.

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 Respondent's son who could testify that he sent money to his mother so that she could

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

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.

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.

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.

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. After that deposit, the balance in the IOLTA account was $5,087.82. 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.

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. 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.

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.

At her evidentiary hearing, 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)[2] 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. Respondent also 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.

II. SUMMARY OF ARGUMENT

In light of all the circumstances, the HPS recommended that Respondent be: 1. 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 Bylaws and other relevant laws; 3. That Respondent undergo an additional six (6) hours of CLE in the area of law office management; and 4. That Respondent

[2] ODC did not charge Respondent with a violation of Rule 1.15(a) of the Rules of Professional Conduct because it did not have clear and convincing evidence that there was property that belonged to a client or a third person in "connection with a representation" in the IOLTA account. The property in the IOLTA account belonged to Respondent and it clearly should not have been deposited into the IOLTA but it was not *per se* commingled with funds belonging to a client.

shall pay the costs of the disciplinary proceeding pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule 19 of the Rules of Appellate Procedure, this Honorable Court's Order of January 13, 2025, stated the Clerk of Court would provide a date of Notice of Argument on a later date.

IV. DISCUSSION

A. Standard of Proof

The charges against an attorney must be proven by clear and convincing evidence pursuant to Rule 3.7 of the Rules of Lawyer Disciplinary Procedure. *See also* Syl. Pt. 1, Lawyer Disciplinary Board v. McGraw, 194 W. Va. 788, 461 S.E.2d 850 (1995). Substantial deference is to be given to the Lawyer Disciplinary Board's findings of fact unless the findings are not supported by reliable, probative, and substantial evidence on the whole record. Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 452 S.E.2d 377 (1994); Lawyer Disciplinary Board v. Cunningham, 195 W. Va. 27, 464 S.E.2d 181 (1995). At the Supreme Court level, "[t]he burden is on the attorney at law to show that the factual findings are not supported by reliable, probative, and substantial evidence on the whole adjudicatory record made before the Board." Cunningham, 195 W.Va. at 39, 464 S.E.2d at 189.

"Stipulations or agreements made in open court by the parties in a trial of a case and acted upon are binding and a judgment founded thereon will not be reversed." Syl. Pt. 3, Matter of Starcher, 202 W.Va. 55, 501 S.E.2d 772 (1998) *citing* Syl. Pt. 1, Butler v. Smith's Transfer Corporation, 147 W.Va. 402, 128 S.E.2d 32 (1962). "In a disciplinary proceeding against a judge, in which the burden of proof is by clear and convincing evidence, where the parties enter into

stipulations of fact, the facts so stipulated will be considered to have been proven as if the party bearing the burden of proof has produced clear and convincing evidence to prove the facts so stipulated." Syl. Pt. 4, Matter of Starcher, 202 W.Va. 55, 501 S.E.2d 772 (1998). The Court has also noted that the same rule would apply to pre-trial stipulations. Id. at 61, 778.

In lawyer disciplinary matters, a *de novo* standard of review applies to questions of law, questions of application of the law to the facts, and questions of appropriate sanction to be imposed. Roark v. Lawyer Disciplinary Board, 201 W. Va. 181, 495 S.E.2d 552 (1997); Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 452 S.E.2d 377 (1994). The Supreme Court of Appeals considers the Lawyer Disciplinary Board's recommendations as to questions of law and the appropriate sanction, while ultimately exercising its own independent judgment. McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381. The Supreme Court of Appeals 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).

B. Analysis Under Rule 3.16 of the Rules of Lawyer Disciplinary Procedure

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).

1. **The Type of 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 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.

2. **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 her conduct, but 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 knowingly and her statements to ODC in the investigation of the matter were also knowingly which is when the lawyer acts with conscious awareness of the nature or attendant circumstances of her conduct, but without the conscious objective or purpose to accomplish a particular result.

3. **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.

4. **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.

V. SANCTION

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syllabus Pt. 3, *in part*, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984), *cited in* Committee on Legal Ethics v. Morton, 186 W.Va. 43, 45, 410 S.E.2d 279, 281 (1991). 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.

As noted above, a principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

At her evidentiary hearing, 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.

As fiduciaries, lawyers bear a solemn duty to manage client funds with the utmost care and transparency. This includes maintaining accurate records, promptly disbursing funds as required, and avoiding any commingling of client and lawyer money. It is without question that Respondent's use of her IOLTA account was not in compliance with the Rules of Professional Conduct. Respondent held funds other than client or third person funds in an IOLTA account and deposited her own funds into an IOLTA account more than the amount reasonably necessary to pay financial institution service charges or fees or to obtain a waiver of service charges or fees. Respondent used the account as she would have used an operating account for her law firm or a personal bank account. The bank records for the IOLTA account for the relevant time reflect a pattern of deposits of earned fees for performed work (Respondent's property) and deposits from Respondent's son (not a client or a third party connected to a representation) or his business. The checks written from the IOLTA account are checks made payable to child support enforcement division on behalf of Respondent's son, made payable to Respondent, or are made payable to third party vendors on Respondent's behalf unrelated to the practice of law. While not diminishing Respondent's complete improper use of the IOLTA account, it is important to point out there was no evidence of conversion or misappropriation of client funds.

In addition to her improper use of an IOLTA account, Respondent also 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. This complaint was opened by the Office of Lawyer Disciplinary Counsel (ODC) against Respondent 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. [ODC Exhibit 1] 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. [ODC Exhibit 2] 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." 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. 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. 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. Respondent finally stated that she no longer handled client funds and intended to close her IOLTA account and destroy any remaining checks. [ODC Exhibit 3]

However, 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. [ODC Exhibit 5 at Bates 71] 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. [Requested Supplemental Exhibit 5a at Bates No. 251] A deposit was made on January 3, 2023, in the amount of $3,080.00 for her earned fees in a guardianship

proceeding. [Stipulated Joint Exhibit 1 and Requested Supplemental Exhibit 5a at Bates No. 252] After that deposit, the balance in the IOLTA account was $5,087.82. [Requested Supplemental Exhibit 5a at 248]

On January 6, 2023, an electronic withdrawal was made from Respondent's IOLTA in the amount $5,050.00 payable to Spinnaker Resorts, a resort located in Hilton Head, South Carolina. [Stipulated Joint Exhibit 1 and Requested Supplemental Exhibit 5a at Bates No. 248] 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 were insufficient funds in the IOLTA. [Requested Supplemental Exhibit 5a at Bates No. 249] 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. 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. [Stipulated Joint Exhibit 1 and Requested Supplemental Exhibit 5a at Bates No. 253]

Respondent *could have* and *should have* just "come clean" with the Office of Disciplinary Counsel in her verified response and admitted to the use of her IOLTA account as a personal account. She did not. It is undisputed and Respondent has admitted that Respondent knowingly made false statements of material fact[3] in her February 7, 2023, verified response to the Office of Disciplinary Counsel in violation of Rule 8.1(a) of the Rules of Professional Conduct. It is ODC's contention that while her handling of the IOLTA account fell far below that what is expected of attorneys and was in violation of the Rules of Professional Conduct, Respondent's most egregious conduct was making the false statements of material fact to ODC "in an effort to avoid facing the

[3] Black's Law Dictionary defines "material fact" as "[a] fact that is significant or essential to the issue or matter at hand; esp., a fact that makes a difference in the result to be reached in a given case. What constitutes a material fact is a matter of substantive law." FACT, Black's Law Dictionary (12th ed. 2024).

consequences of [her] actions." Lawyer Disciplinary Board v. Grindo, 243 W. Va. 130, 142, 842 S.E.2d 683, 695 (2020).

The Court has suspended lawyers for conduct that involves improper handling of client funds and subsequently lying to ODC. However, Respondent is somewhat distinguishable from Haught and Grindo where although there were false statements made to ODC in all three cases, these suspension cases also involved the improper handling of client funds and overbilling to the Public Defender Services, and there is no such evidence in the instant matter. *See* Lawyer Disciplinary Board v. Haught, 233 W.Va. 185, 757 S.E.2d 609 (2014) (one year suspension after lawyer failed to properly deposit client funds, lied to ODC about how he handled those funds, and lied to ODC about the identity of his clients in a real estate transaction); and Lawyer Disciplinary Board v. Grindo, 243 W.Va. 130, 842 S.E.2d 683 (2020) (two year suspension after lawyer overbilled PDS then lied to PDS and the ODC). Respondent's case did not involve any use of client funds or any evidence of commingling with client funds, but the actual misuse of the account and then lying to ODC about the same.

Moreover, Respondent's actions involving the knowing misuse of the actual IOLTA account are seemingly less egregious than the negligent misuse of *actual* client funds that have resulted in reprimands from this Court. *See e.g.* Lawyer Disciplinary Board v. Michael F. Niggemyer, Supreme Court No. 31655, May 11, 2005 (Unpublished) (lawyer was reprimanded, amongst other sanctions for failure to promptly pay medical providers, for failure to properly maintain a separate IOLTA account, and failure to respond to his client's inquiries about the status of her matter); Lawyer Disciplinary Board v. Michael R. Cline, Supreme Court No. 32984, March 19, 2007 (Unpublished) (lawyer was reprimanded, amongst other sanctions, for failure to promptly disburse client money, neglected the matter and failed to respond to requests for information from both his client and the Office of Disciplinary Counsel); and Lawyer Disciplinary Board v. Kenneth

E. Chittum, 225 W.Va. 83, 689 S.E.2d 811 (2010) (lawyer reprimanded for failure to properly maintain and administer a separate client trust account and commingling his personal money with client money a violation of Rules 1.15(a) and 1.15(d) of the Rules of Professional Conduct.)[1]

Recently, a Family Court Judge committed two violations of Rule 2.16(A) [lack of candor to disciplinary counsel]; one violation of Rule 1.1 [violation of the Code]; and one violation of Rule 1.2 of the Code of Judicial Conduct based upon her being "serially less than candid with disciplinary authorities—once while under oath" during an investigation into another member of the judiciary. Matter of Rock, 249 W. Va. 631, 643, 900 S.E.2d 57, 69 (2024). The Court reasoned that "this misconduct strikes at the very heart of respondent's expectations of litigants and attorneys who appear before her—that they will be truthful and candid in adherence to their oath and in deference to her authority over the proceedings" but the Court nonetheless determined that a reprimand and assessment of costs was the appropriate sanction. Matter of Rock, 249 W. Va. 631, 634, 900 S.E.2d 57, 60 (2024). Similar to Rock, Respondent also knowingly made false statements to ODC, and like the judicial officer she also lacks any disciplinary history, however, unlike the judicial officer, Respondent has acknowledged and admitted the misconduct.

This Court crafts sanctions to punish attorneys, protect the public, and restore confidence in the legal profession:

> 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.

Lawyer Disciplinary Bd. v. Schillace, 247 W. Va. 673, 688, 885 S.E.2d 611, 626 (2022).

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[1]In addition to the issues with his trust account, Chittum was also sanctioned for attempting to establish a sexual relationship with his client through inappropriate personal correspondence. Chittum, 225 W.Va. at 89, 689 S.E.2d at 817 (2010)

This Court has also repeated advised that "[i]n disciplinary proceedings, this Court, rather than endeavoring to establish a uniform standard of disciplinary action, will consider the facts and circumstances [in each case], including mitigating facts and circumstances, in determining what disciplinary action, if any, is appropriate[.] Syl. pt. 2, [in part] Committee on Legal Ethics v. Mullins, 159 W.Va. 647, 226 S.E.2d 427 (1976).' Syllabus Point 2, [in part] Committee on Legal Ethics v. Higinbotham, 176 W.Va. 186, 342 S.E.2d 152 (1986)." Syllabus Point 4, in part, Committee on Legal Ethics of the West Virginia State Bar v. Roark, 181 W.Va. 260, 382 S.E.2d 313 (1989); and Lawyer Disciplinary Board v. Brown, 223 W. Va. 554, 560, 678 S.E.2d 60, 66 (2009).

V. CONCLUSION

For the reasons set forth above, ODC recommends this Honorable Court adopt the recommendations of the Hearing Panel Subcommittee and impose the following sanctions:

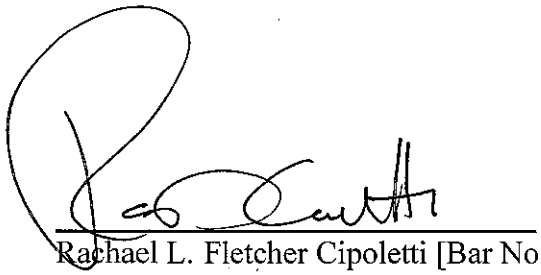
1. That Respondent be Admonished;

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 Bylaws and other relevant laws;

3. That Respondent undergo an additional six (6) hours of CLE in the area of law office management; and

4. That Respondent shall pay the costs of the disciplinary proceeding pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Respectfully submitted,
The Office of Lawyer Disciplinary Counsel



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CERTIFICATE OF SERVICE

This is to certify that I, Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, have this day, the 12th day of February, 2025, served a true copy of the foregoing "**BRIEF OF THE LAWYER DISCIPLINARY BOARD**" upon Timothy P. Lupardus, counsel for Respondent Vickie L. Hylton, electronically through File and Serve Xpress at the following address:

Timothy P. Lupardus, Esquire
office@luparduslaw.com

Rachael L. Fletcher Cipoletti