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 VICKIE L. HYLTON

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I. STATEMENT OF THE CASE

A. Nature of the Proceedings and Procedural History.

The Office of Disciplinary Counsel filed formal charges against Vickie L. Hylton (hereinafter "Respondent") with the Clerk of the Supreme Court of Appeals on or about March 5, 2024. Respondent, by and through counsel, filed her response to the Statement of Charges on or about April I 0, 2024.

On June 17, 2024, the parties appeared before the Hearing Panel Subcommittee (hereinafter "HPS"), comprised of Richard A. Pill, Esquire, Chairperson; Stephen M. Mathias, Esquire, and Mark Blankenship, Layperson, and submitted the parties' agreed Stipulated Findings of Fact, Admitted Violations of the Rules of Professional Conduct and Recommended Sanctions. Disciplinary Counsel followed up by filing the same formally post-hearing. Respondent made no counter filing or counter argument, choosing to rest on the admissions and testimony within and supporting the stipulation, as well as ODC Exhibits 1-11 which were offered jointly as Joint Exhibit 1.

B. Recommended Discipline

On 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

C. Respondent 's IOLTA Impropriety Was Not Theft

Respondent ended many facets of her law practice years ago to focus her efforts on her true calling and now serves as a court-appointed guardian *ad litem* in child abuse and neglect proceedings and family court proceedings. In conjunction with that change, she no longer manages client finds in trust.

She, however, maintained an IOLTA account into which she placed personal funds received for appointed work. This was, or course, improper and she admits that it was and in violation of Rule 1.15(b) and (f). The only money from any other source was money that her own son sent to her as she pays his child support for him in West Virginia, and she admits that as well. No clients lost money. She did not steal or convert any clients' funds, and she is not a thief.

Her response to the ODC letter informing her of the complaint did not adequately or fully explain the circumstances, and she admits a violation of Rule 8.1(a) of the

Rules of Professional Conduct as stipulated. She has since then made full and complete stipulations to all the facts and has expressed her embarrassment and remorse in utilizing the IOLTA account as essentially a personal savings into which she placed her own money. She obviously ought simply to have opened a savings account.

D. Agreement With Office of Disciplinary Recommendations

Respondent agrees with the recommendation for discipline set forth in the Brief of the Office of Disciplinary Counsel, "II. SUMMARY OF ARGUMENT", and adopts the same by reference as if set forth fully herein.

II. SUMMARY OF ARGUMENT

The Recommended Sanctions are appropriate under the facts of this matter as no client or public funds were involved, there was no theft, and the Respondent admitted her misconduct, is remorseful, and has no prior disciplinary history. There was no harm to clients or public. The Sanctions appropriately punish, instruct, deter others, and protect the profession, the system and the public.

III. STATEMENT REGARDING ORAL ARGUMENT

Respondent understands the Scheduling Order to indicate that the Court will schedule a Rule 19 argument. Accordingly, Respondent will defer to the Court's judgement as to the necessity thereof.

IV. ARGUMENT

A. Standard of Proof

Rule 3.7, Rules of Lawyer Disciplinary Procedure, requires proof of charges by clear and convincing evidence. Substantial deference is given the Lawyer Disciplinary Board's factual findings so long as supported by reliable, probative, and substantial evidence. 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)(placing the burden on the attorney appealing such findings to show that the facts were not so supported). Here, Respondent takes no issue with the findings or recommendations of the Lawyer Disciplinary Board and, in fact entered a stipulation. Such "...agreements made in open court by the parties in a trial of a case and acted upon are binding and a judgement 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). These same rules apply to pre-trial stipulations. Starcher at 61, 778.

It is well-settled law that in matters of attorney discipline, the Supreme Court makes a *de novo* review of the application of law and is the final arbiter of appropriate sanctions, Roark v. Lawyer Disciplinary Board, 201 W.Va. 181, 495 S.E.2d 552 (1977), taking into account the recommendations of the Lawyer Disciplinary Board while exercising its own judgement as to the propriety of sanctions, Committee on Legal Ethics v. McCorkle, 192 W.Va 286, 452 S.E.2d 377(1994), balancing the interest of public protection, reassurance of attorney reliability and integrity, and the

administration of justice. Lawyer Disciplinary Board v. Taylor, 192 W.Va 139, 451 S.E.2d 440 (1994).

B. Rule 3.16 Factors

The factors under consideration for proceedings such as this one are enumerated in Rule 3.16 of the Rules of Lawyer Disciplinary Proceedings. Each relevant factors is discussed herein below.

(1) Whether the lawyer violated a duty to a client, the public, the legal system or the profession.

Respondent agrees with the position taken by Disciplinary Counsel that the most important ethical duties are those owed to clients and the public. While some lawyers have certainly violated duties to clients and the public via conversion of IOLTA trust funds, that is not the case here.

The Respondent stands by her stipulation that she did breach duties to the legal system and profession.

(2) Whether the lawyer acted intentionally, knowingly, or negligently

Respondent did not act with an intentional plan to bring about an improper result. She acted consciously, and therefore knowingly. She did not deposit her own funds into an IOLTA by accident or through neglect. She, in fact, used the account as her own after she quit placing unearned client funds into it instead of opening a personal savings, which she ought to have done. And while she was not motivated by plan to bring about some specific outcome, and acted largely from fear and adrenaline, her response to the complaint letter was knowingly spare on

detail and full explanation. In fact, had her response been more complete and therefore fully accurate, these charges might altogether have been avoided, though this is speculative of course.

(3) The amount of actual or potential injury caused by the lawyer's misconduct.

There was no harm to any third party, and the parties hereto have so stipulated.

(4) The existence of aggravating or mitigating factors.

The factors in mitigation outweigh those in aggravation. In mitigation, Respondent has no prior disciplinary action, and she is clearly remorseful and fully accepted responsibility for her misconduct as evidence by the entry of the stipulation herein. The aggravating factor is that Respondent has practiced law long enough to have known her duties regarding the handling of her IOLTA account.

V. THE RECOMMENDED SANCTION IS APPROPRIATE AND CONCLUSION

Attorney Discipline must maintain attorney behavior at an appropriate level, and serve both as instruction as to the standards for ethical behavior and deterrent against similar actions by other lawyers. See, Syl Pt. 3, Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987); Syl Pt. 3, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984).

Respondent admits that she misused an IOLTA account in violation of Rule 1.5(b) by comingling personal funds therein. She should have opened a wholly separate, regular banking account or used her office operating account for those funds, and she should have paid personal expenses from those accounts, not the IOLTA. She did not commingle her personal funds with those of clients. She did not spend or convert client funds to her own use. Still, this use of an

IOLTA is not as intended and out of compliance with the expectations of the State Bar and the legal profession.

When she received the complaint letter, she responded that the account had no client funds but also that "the account balance was zero", which it was not as it did contain, and had contained, non-client funds. She agrees with the brief of the Office of Disciplinary Counsel that ought to have just responded that she was using the IOLTA as a personal account, and that it did not contain client funds.

While there are prior matters in which knowing misrepresentations to ODC resulted in suspension through disciplinary proceedings, they are distinguishable from the case at bar. The cases all involved misconduct which directly impacted client funds and client representation or unethically obtained public funds and malfeasance as to taxpayer money in the form of over-billing PDS. See, Lawyer Disciplinary Board v. Haught, 233 W.Va. 185, 757 S.E.2d 609 (2014) (wherein the attorney failed to make proper client fund deposits, lied as to that fact, and even lied as to the identity of his clients in the underlying real estate transaction); Lawyer Disciplinary Board v. Grindo, 243 W.Va. 130, 842 S.E.2d 683 (2020)(wherein the lawyer overbilled Public Defender Services, then lied to PDS investigators and again to ODC investigators).

Highlighting how this case is distinguishable from Haught and Grindo is the recent Matter of Rock, 249 W.Va. 631, 900 S.E.2d 57 (2024). As cited in the Brief of the Office of Disciplinary Counsel herein, in Rock a Family Court Judge who was found to be "serially less than candid" with the disciplinary authorities while under oath as to her own misconduct was sanctioned by reprimand and cost assessment. Matter of Rock, 249 W.Va. at 634, 900 S.E.2d at 60 (2024). The Family Court Judge had, like Respondent herein, no prior disciplinary actions.

Respondent herein, has admitted misconduct and shown remorse, which mitigation was not present in Rock. *Id.*

Moreover, the misuse of IOLTA accounts that actually involved client finds have resulted in reprimand of the attorneys. See, Lawyer Disciplinary Board v. Niggemyer, Supreme Court No. 31655, May 11, 2005 (unpublished)(reprimand for failure to make payment of medical bills from funds held for client for that purpose and for failure to maintain a separate IOLTA account). Here, no client funds were misused, mis-appropriated or intermingled.

The Brief of the Office of Disciplinary Counsel cites additional examples of reprimand in IOLTA misconduct cases, all of which did involve actual client funds, which are hereby incorporated by reference [Pp. 16, 17 Brief of the Office of Disciplinary Counsel].[1]

In conclusion, Respondent respectfully submits that the sanctions stipulated to by the parties recommended by the Office of Disciplinary Counsel, and thereafter recommended by the Hearing Panel Subcommittee, are appropriate to punish, instruct, deter, and protect as this Respondent has admitted her misconduct, demonstrates remorse, will never again violate such rules, and comes to this proceeding with no prior disciplinary history, particularly given there were no client funds involved and n light of recent precedent, which conduct this Respondent exceeds by virtue of her admissions and remorse.

[1] In one of the cases cited, the attorney apparently also sought to establish a sexual relationship with his client, certainly a factor of great concern which is most assuredly not an issue in this matter. See, Lawyer Disciplinary Board v. Kenneth E. Chitttum, 225 W.Va 83, 85, 689 S.E.2d 811, 817 (2010).

Respectfully Submitted
Respondent Vickie L. Hylton By Counsel

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CERTIFICATE OF SERVICE

I, Timothy P. Lupardus, hereby certify that I have served the foregoing **BRIEF OF VICKIE L. HYLTON** upon the Lawyer Disciplinary Board electronically through File and Serve Xpress at the following address:

Rachael L. Fletcher Cipoletti

rfcipoletti@wvodc.org

on the 27th day of March 2025.

/s/ Timothy P. Lupardus (WVSB #6252)