

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

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**LAWYER DISCIPLINARY BOARD,**

**Petitioner,**

**v.**

**No. 24-129**

**BENJAMIN R. FREEMAN,**

**Respondent.**

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**REPLY BRIEF OF THE  
OFFICE OF LAWYER DISCIPLINARY COUNSEL**

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Rachael L. Fletcher Cipoletti [Bar No. 8806]  
Chief Lawyer Disciplinary Counsel  
rfcipoletti@wvdc.org  
Lauren Hall Knight [Bar No. 13405]  
Lawyer Disciplinary Counsel  
lhall@wvdc.org  
Office of Lawyer Disciplinary Counsel  
West Virginia Judicial Tower  
4700 MacCorkle Avenue SE, Suite 1200  
Charleston, West Virginia 25304  
(304) 558-7999  
(304) 558-4015 – *facsimile*

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## **I. REPLY TO RESPONDENT'S BRIEF**

The Hearing Panel Subcommittee of the Lawyer Disciplinary Board (hereinafter "HPS") found clear and convincing evidence that Respondent committed numerous violations of the Rules of Professional Conduct including: six violations of Rule 1.3 (diligence); two violations of Rule 1.4(a)(3) (communication); one violation of Rule 1.4(a)(4) (communication); one violation of Rule 1.15(a) (safekeeping property); one violation of Rule 1.15(c) (safekeeping property); four violations of Rule 3.2 (expediting litigation); six violations of Rule 3.4(c) (fairness to opposing party and counsel); one violation of Rule 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter); four violations of Rule 8.1(b) (knowingly failing to respond to a lawful demand for information from a disciplinary authority); two violations of Rule 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and eight violations of Rule 8.4(d) (conduct that is prejudicial to the administration of justice). The HPS recommended in its Report of the Hearing Panel Subcommittee that Respondent's license to practice law be suspended for 18 months, and that he be required to comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure, promptly surrender all papers and property in his possession to which his clients are entitled, complete 12 hours of CLE devoted solely to office management/ethics prior to petitioning for reinstatement, and reimburse the Lawyer Disciplinary Board the costs of these proceedings.

The Office of Lawyer Disciplinary Counsel (hereinafter "ODC") filed its objection to the recommendation of the HPS and argued in its brief that the sanction recommended by the HPS was inappropriate based upon the numerous violations of the Rules of Professional Conduct found by the HPS, including the finding that Respondent deposited advance legal fees into his operating account and knowingly commingled, misappropriated, and converted funds belonging to his client

to his own use. Based upon the foregoing, the ODC recommended that Respondent's law license be annulled. In his brief, Respondent did not "substantially dispute" the factual findings made by the HPS and acknowledged that the "evidence may exist to show" that he violated the Rules of Professional Conduct. Respondent contends that an admonishment, reprimand, or period of probation would be an appropriate sanction to impose in this matter as he "has corrected his errant actions and conduct and has addressed the issues which led to the filing of this action." Respondent's arguments are without merit.

## II. ARGUMENT

This Court has held that, at this stage in the proceedings, "[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 HPS. *Lawyer Disciplinary Bd. v. Cunningham*, 195 W. Va. 27, 34-35, 464 S.E.2d 181, 188-89 (1995) (citing *Committee on Legal Ethics v. McCorkle*, 192 W. Va. 286, 290, 452 S.E.2d 377, 381 (1994)). This Court gives respectful consideration to the HPS's recommendations as to questions of law and the appropriate sanction, while ultimately exercising its own independent judgment. *Cunningham*, 195 W. Va. at 35-36, 464 S.E.2d at 189-90 (citing Syl. Pt. 3, *McCorkle*, 192 W. Va. 286, 452 S.E.2d 377). It is also well settled that "[t]his Court is the final arbiter of legal ethics problems and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys' licenses to practice law." *Cunningham*, 195 W. Va. at 36, 464 S.E.2d at 190 (citing Syl. Pt. 3, *Committee on Legal Ethics v. Blair*, 174 W. Va. 494, 327 S.E.2d 671 (1984)).

In support of his position, Respondent largely reiterates the arguments he made before the HPS in his Proposed Findings of Fact and Conclusions of Law and argues that his conduct warrants an admonishment, reprimand, or period of probation because he has corrected his errant actions

and addressed the issues which led to the filing of this disciplinary action. Specifically, Respondent argued in favor of his recommended sanction by stating that an unusually heavy caseload combined with a lack of support staff was the cause of his misconduct and that following the filing of this disciplinary action he has been better able to manage his caseload due to a reduction in cases and “a reorganization of his resources.”<sup>1</sup> This argument is not compelling for several reasons. As an initial matter, having a heavy caseload or lack of support staff does not negate or minimize a lawyer’s duty to comply with the Rules of Professional Conduct. Although Respondent contends that he has lightened his caseload and reorganized his resources to prevent the underlying misconduct from recurring, the record does not reflect that Respondent made any efforts to remedy his situation prior to the filing of the Statement of Charges in this matter. This lack of remedial action is compounded by the fact that Respondent asserted well over a year prior to the filing of the Statement of Charges that his delay in perfecting the appeals in *In re* K.H. and *In re* B.S., M.S., and H.S., was due, in part, to having a “dramatically increased” amount of court appointed cases, a demanding schedule, and multiple appeals and habeas corpus petitions. [ODC Ex. 47, Bates 342-43].<sup>2</sup> Moreover, the record does not reflect that Respondent voluntarily reduced his caseload, rather the Court denied Respondent eligibility for any court-appointed cases until the ODC’s investigation into this matter and any resulting disciplinary action was fully concluded. [ODC Ex. 156, Bates 2759].

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<sup>1</sup> Respondent acknowledged that he failed to timely file appellate briefs on behalf of his clients, however he inaccurately stated in his brief that he failed to timely file four appellate matters. The record shows that Respondent failed to comply with the filing deadlines set forth by the Court in five appellate matters: (1) *In re* K.H., No. 22-0408; (2) *In re* B.S., M.S., and H.S., No. 22-0413; (3) *In re* A.B. and J.S., No. 23-140; (4) *In re* L.T., L.T., and J.T., No. 23-516; and (5) *In re* A.B., No. 23-400.

<sup>2</sup> Respondent made this assertion in a letter which was received by the ODC on November 7, 2022, and the Statement of Charges issued in this matter was filed with the Supreme Court of Appeals of West Virginia on March 7, 2024, and served upon Respondent on March 19, 2024. [ODC Ex. 47, Bates 342-43].

Respondent further argued that he has worked to remedy all violations of the Rules of Professional Conduct by “securing from the Circuit Court substitute counsel for Mr. [Young] and Mr. Murray.” The record does not support this assertion, rather the record reflects that the Court appointed a new attorney to represent Mr. Murray on December 21, 2023, after Respondent failed to timely file an amended petition for habeas corpus relief on Mr. Murray’s behalf and failed to attend the final omnibus evidentiary hearing on December 20, 2023. [ODC Ex. 140, Bates 2650-51]. Notably, Respondent testified that he was not even aware until his disciplinary hearing, which was held on July 16, 2024, that he was removed as counsel for Mr. Murray. [Hrg. Tr. 190-92]. Accordingly, the assertion that Respondent secured substitute counsel for Mr. Murray is unfounded.

Respondent does not appear to contest that the finding made by HPS that he accepted a fee for legal services and wrongfully commingled, misappropriated, and converted funds belonging to his client to his own use. Instead, Respondent reiterated that he typically does not charge clients more than their initial payment and that he typically charges clients only after he has done most or all the work in their case. While this may be his typical billing practice, it is uncontested that the \$2,200.00 provided to Respondent by Ms. Allison was a legal fee paid in advance to be billed against at a rate of \$200.00 per hour. [Hrg. Tr. 103, 105]. The record clearly shows that Respondent deposited these funds into his operating account, an account which had a balance of -\$632.65 at the time and used these funds to pay personal expenses prior to earning the same. [ODC Ex. 86, Bates 1054; ODC Ex. 96, Bates 1157, 1241; Hrg. Tr. 127-28]. Respondent also does not appear to contest the finding made by the HPS that he acted knowingly by failing to keep Ms. Allison’s legal fees paid in advance in a client trust account separate from his own property and by spending these funds prior to earning them. These findings are supported by reliable, probative, and substantial



evidence on the record in this matter, and this Court has consistently held that the general rule is that “absent compelling extenuating circumstances, misappropriation or conversion by a lawyer of funds entrusted to his/her care warrants disbarment.” *Law. Disciplinary Bd. v. Greer*, \_\_\_ W. Va. \_\_\_, 917 S.E.2d 1, 9 (2024) (citations omitted).

Regarding the finding that he made a knowingly false statement of material fact at his sworn statement by stating that the \$2,200.00 check from Ms. Allison was deposited into his IOLTA account and that when he felt that he had done roughly ten hours of work, he transferred the funds to his general account, Respondent reiterated that he was mistaken and did not intentionally misrepresent this information to Disciplinary Counsel. [ODC Ex. 161, Bates 2871]. Respondent’s contention that his false statements to Disciplinary Counsel were inadvertent is not compelling based upon a review of the record. Respondent testified that he “almost never” used his IOLTA account. [Hrg. Tr. 111, 116]. The bank records confirm this, revealing only one instance of Respondent depositing client funds into this account from July 1, 2021, through the last statement date of December 31, 2021. [ODC Ex. 96, Bates 1175]. Respondent also testified that he did not even know his IOLTA account was closed until he received the Statement of Charges which was served on him on March 19, 2024. [Hrg. Tr. 106-07]. It is implausible that Respondent was mistaken when he made these false statements to Disciplinary Counsel as the record clearly shows it was a rare occurrence for Respondent to deposit client funds into his IOLTA account. Moreover, Respondent conceded in his brief that he rarely used his IOLTA account.


### **III. CONCLUSION**

The principal purpose of an attorney disciplinary proceeding is to “protect the public, to reassure it as to the reliability and integrity of attorneys and to safeguard its interest in the administration of justice[.]” *Committee on Legal Ethics v. Keenan*, 192 W. Va. 90, 94, 450 S.E.

2d 787, 791 (1994). The HPS properly found clear and convincing evidence that Respondent committed numerous violations of the Rules of Professional Conduct, including that Respondent deposited unearned legal fees into his operating account and wrongfully commingled, misappropriated, and converted funds belonging to his client to his own use. The record establishes that the charges against Respondent have been proven by clear and convincing evidence, and that Respondent has transgressed all four factors set forth in Rule 3.16 of the Rules of Lawyer Disciplinary Procedure to be considered by the Court when imposing a sanction after a finding of lawyer misconduct. *See also* Syl. Pt. 4, *Office of Disciplinary Counsel v. Jordan*, 204 W. Va. 495, 513 S.E.2d. 722 (1998). For the reasons set forth above, and in the previously filed Brief of the Office of Lawyer Disciplinary Counsel, the ODC recommends that:

1. Respondent's law license be annulled;
2. Respondent be ordered to comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure; and
3. Respondent be ordered to pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

*Respectfully submitted,*  
Office of Lawyer Disciplinary Counsel

  
Rachael L. Fletcher Cipoletti [Bar No. 8806]  
Chief Lawyer Disciplinary Counsel  
rfcipoletti@wvdc.org  
Lauren Hall Knight [Bar No. 13405]  
Lawyer Disciplinary Counsel  
lhall@wvdc.org  
Office of Lawyer Disciplinary Counsel  
West Virginia Judicial Tower  
4700 MacCorkle Avenue SE, Suite 1200  
Charleston, West Virginia 25304  
(304) 558-7999

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**CERTIFICATE OF SERVICE**

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This is to certify that I, Lauren Hall Knight, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 6<sup>th</sup> day of August, 2025, served a true copy of the foregoing **"REPLY BRIEF OF THE OFFICE LAWYER DISCIPLINARY COUNSEL"** upon Respondent Benjamin R. Freeman, Esquire, electronically via File and Serve Xpress and email, to the following address:

[bfreeman@freemanlawwv.com](mailto:bfreeman@freemanlawwv.com)

  
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Lauren Hall Knight, Esquire