

MAR 16 2010

OFFICE OF
DISCIPLINARY COUNSEL

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 15th of March, 2010, the following order was made and entered:

Office of Disciplinary Counsel, Petitioner

vs.) No. 35503

Joshua M. Robinson, a member of The West
Virginia State Bar, Respondent

On a former day, to-wit, March 10, 2010, came the Office of Disciplinary Counsel, by Rachael L. Fletcher Cipoletti, Lawyer Disciplinary Counsel, pursuant to Rule 3.27 of the Rules of Lawyer Disciplinary Procedure, seeking the immediate suspension of the license to practice law in the State of West Virginia of the respondent, and/or pursuant to Rule 3.29, Rules of Lawyer Disciplinary Procedure, requesting that this Court authorize the chief judge of the Circuit Court of Kanawha County to appoint an attorney licensed to practice law in the State of West Virginia to inventory respondent's files and to take such action as seems indicated to protect the interest of the respondent and his clients for the reasons stated therein.

Upon consideration whereof, the Court is of opinion to and doth hereby grant said petition. It is therefore ordered that the license to practice law in the State of West Virginia of Joshua M. Robinson, be, and it hereby is, suspended. It is further ordered that the Honorable Tod J. Kaufman, Chief Judge of the Circuit Court of Kanawha County, be, and he hereby is, authorized to appoint an attorney to inventory the respondent's files and to take such action as seems indicated to protect the interests of the respondent and his clients.

Service of a copy of this order upon the respondent and upon the Honorable Tod J.

Kaufman, Judge, shall constitute sufficient notice of the contents herein.

A True Copy

Attest:


Clerk, Supreme Court of Appeals

NO. _____

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

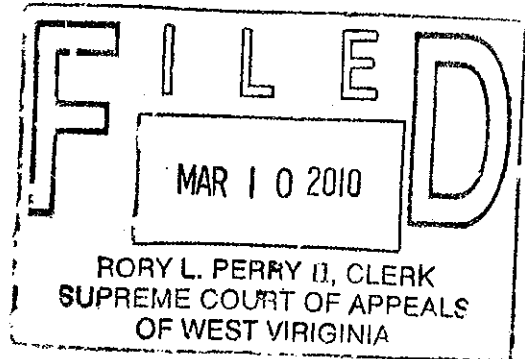
OFFICE OF LAWYER DISCIPLINARY COUNSEL,

Petitioner,

v.

**JOSHUA M. ROBINSON, a member
of the West Virginia State Bar,**

Respondent.



**PETITION SEEKING IMMEDIATE SUSPENSION OF A LAWYER
PURSUANT TO RULE 3.27 OF THE RULES OF LAWYER
DISCIPLINARY PROCEDURE AND APPOINTMENT OF TRUSTEE**

NOW COMES the Office of Disciplinary Counsel by Rachael L. Fletcher, its counsel, and reports to this Court pursuant to Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure that Joshua M. Robinson (hereinafter "Respondent"), has committed violations of the West Virginia Rules of Professional Conduct and poses a substantial threat of irreparable harm to the public. Furthermore, pursuant to Rules of Lawyer Disciplinary Procedure Rules 3.27(c) and/or 3.29, the Office of Disciplinary Counsel reports to this Court that Respondent is currently incarcerated in the South Central Regional Jail and therefore the interests of his clients require protection. *See* Lawyer Disciplinary Board v. Albers, 214

W.Va. 11, 585 S.E.2d 11 (2003). The Office of Disciplinary Counsel requests the Court appoint or authorize the Chief Judge of the Circuit Court of Kanawha County to appoint another lawyer to serve as trustee to protect the interests of Respondent's clients and further, that the Court temporarily suspend Respondent from the practice of law until his underlying current criminal proceedings in the Kanawha County Circuit Court and subsequent disciplinary proceedings before the Lawyer Disciplinary Board are completed.

In support of this request, the Office of Disciplinary Counsel states as follows:

FACTS

1. Respondent was admitted to the West Virginia State Bar on or about December 5, 2002, and is therefore subject to the lawyer disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and the Lawyer Disciplinary Board. Respondent practices in and around Kanawha County, West Virginia.
2. On or about June 29, 2009, a Grand Jury of the Fayette Circuit Court Criminal Branch, 4th Division of the Commonwealth of Kentucky issued a Two Count Indictment that charged Respondent with two counts of First Degree Wanton Endangerment. [Exhibit A].
3. On or about October 9, 2009, Respondent pled guilty to Two Counts of Second Degree Wanton Endangerment. [Exhibit B].
4. On or about October 13, 2009, a Judgment on Guilty Plea was entered by the Fayette Circuit Court. A sentencing hearing was set for November 20, 2009. [Exhibit C].

5. Respondent failed to appear at the sentencing hearing and the Court entered an Order that revoked Respondent's bond and ordered Respondent and his surety to appear before the Court on December 18, 2009. [Exhibit D].
6. The Court also issued a Warrant for Arrest for Respondent on or about November 25, 2009. [Exhibit E].
7. On or about December 2, 2009, Respondent was involved in a physical altercation with his client David Lee Gump, II. Upon information and belief, Mr. Gump was arrested and charged with battery and burglary. Upon information and belief, Mr. Gump required medical treatment as a result of the injuries from the altercation.
8. Upon information and belief, on or about December 11, 2009, after a hearing on the matter, Kanawha County Magistrate Paris Workman found no probable cause on both of the charges involving Mr. Gump and dismissed the case.
9. On or about December 15, 2009, the Office of Disciplinary Counsel opened an ethics complaint against Respondent and docketed the same for investigation.
10. On or about December 23, 2009, Respondent was arrested on a fugitive warrant arising from the Kentucky Warrant for Arrest that was issued on or about November 25, 2009.
11. On or about December 30, 2009, Respondent appeared before the Kanawha County Circuit Court and was permitted to pay \$1,000.00 in bond and upon agreement with

the prosecutor in Kentucky, Respondent was permitted to self-report to Kentucky for a sentencing hearing scheduled February 5, 2010.

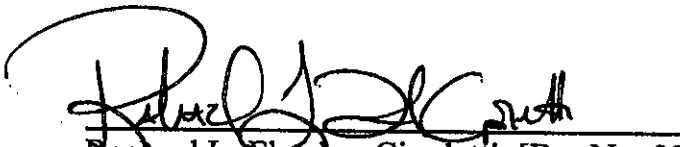
12. On or about February 9, 2010, the Fayette Circuit Court Criminal Branch, 4th Division of the Commonwealth of Kentucky sentenced Respondent to (12) twelve months suspended sentence and was conditionally discharged for (2) two years.
13. On or about February 26, 2010, the Grand Jury of the Kanawha County Circuit Court issued a Three Count Indictment that charged Respondent with One Count of Felony Malicious Assault, One Count of Felony Embezzlement, One Count of Misdemeanor Obstruction of Justice. [Exhibit F].
14. On or about March 5, 2010, the State of West Virginia filed its position on Respondent's bond. [Exhibit G].
15. On or about March 8, 2010, the Kanawha County Circuit Court Judge issued an Arraignment Order which set Respondent's bond at \$25,000.00 or 10% cash. The Court further ordered that in addition to the bond, Respondent would be placed on home confinement. Respondent was advised by the Court that he had until 4pm on or about March 8, 2010 to post the requisite bond or self-report to jail. [Exhibit H].
16. On or about March 8, 2010, Respondent failed to appear before the Court and failed to self-report to jail.
17. On or about March 8, 2010, the Court subsequently issued a *Capias* Order for Respondent's failure to appear. [Exhibit I].

18. On or about March 8, 2010, pursuant to the *Capias* Order, Respondent was arrested by the Charleston Police Department and was transported to South Central Regional Jail.
19. As of the filing of this petition, Respondent has been booked as a pre-trial felon and is currently incarcerated at the South Central Regional Jail and is clearly unable to protect the interests of his clients.
20. Even if Respondent is subsequently able to post the requisite \$25,000.00 bond as required by the Court, the Court has placed Respondent on home confinement which would also reasonably impede Respondent's ability to protect the interests of his clients.
21. "The primary purpose of the ethics committee (Office of Disciplinary Counsel) is not punishment, but is the protection of the public and the reassurance of the public as to the reliability and integrity of attorneys." Lawyer Disciplinary Board v. Albers, 214 W.Va. 11, 12, 585 S.E.2d 11, 12 (2003) *citing* Committee on Legal Ethics v. Ikner, 190 W.Va. 433, 436, 438 S.E.2d 613, 616 (1993).
22. Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure provides a mechanism to immediately suspend the license of a lawyer who (1) is disabled or is accused of violating the West Virginia Rules of Professional Conduct and (2) who is alleged to pose a substantial threat of irreparable harm to the public.

23. The procedure outlined in Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure is an extraordinary proceeding that should be used only in “the most extreme cases of lawyer misconduct.” See Syllabus Point 1, Office of Disciplinary Counsel v. Battistelli, 193 W.Va. 629, 457 S.E.2d 652 (1995).
24. Rules 3.27(c) and 3.29 the Rules of Lawyer Disciplinary Procedure provides that the Court may appoint a trustee, or authorize the Chief Judge in the Circuit in which the lawyer maintained his practice, to appoint a trustee to protect the interests of the lawyer’s clients.
25. Because of the “enormous amount of trust that the public places in its lawyers, this Court must insure that the public's interests are protected and that the integrity of the legal profession is maintained.” See Office of Lawyer Disciplinary Counsel v. Albers, 214 W.Va. 11, 585 S.E.2d 11 W.Va., 2003.
26. Respondent has been indicted on criminal charges arising from an alleged felonious assault on his client, embezzlement of monies from the same client by and through his representation of the Estate of the client’s grandfather, and obstructing the police investigation into the same by providing false evidence to the investigating officer. Respondent has since willfully failed to appear before the Court causing a *Capias* to be issued for his arrest. Respondent is now incarcerated and if he is able to post bond, after his release from jail, Respondent will remain on home confinement.
27. Given the totality of the circumstances, including but not limited to his current incarceration, he is clearly unable to represent and protect the interests of his clients.

WHEREFORE, the Office of Disciplinary Counsel requests that the Court temporarily, but immediately, suspend the license of the Respondent until the underlying criminal matter and the subsequent disciplinary proceedings against him have been completed and that the Court authorize the Chief Judge of the Circuit Court of Kanawha County to appoint another lawyer to serve as trustee to protect the interests of Respondent's clients.

Respectfully submitted,
Office of Disciplinary Counsel, by



Rachael L. Fletcher Cipoletti [Bar No. 8806]
Chief Disciplinary Counsel
2008 Kanawha Boulevard East
Charleston, West Virginia 25311
(304) 558-7999
(304) 558-4015 facsimile

CERTIFICATE OF SERVICE

This is to certify that I, **Rachael L. Fletcher Cipoletti**, Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 10th day of March, 2010, served a true copy of the foregoing "**PETITION SEEKING IMMEDIATE SUSPENSION OF A LAWYER PURSUANT TO RULE 3.27 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE AND APPOINTMENT OF TRUSTEE**" upon Respondent Joshua M. Robinson by mailing the same, United States Mail with sufficient postage, to the following addresses:

Joshua M. Robinson, Esquire
1542 Lee Street
Charleston, West Virginia 25311

Joshua M. Robinson, Esquire
1001 Centre Way
South Charleston, West Virginia 25309


Rachael L. Fletcher Cipoletti