

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 2<sup>nd</sup> June, 2010, the following order was made and entered:

Office of Disciplinary Counsel, Petitioner

vs.) No. 35566

Richard A. Hayhurst, a member of the West  
Virginia State Bar, Respondent

On a former day, to-wit, May 25, 2010, came the Office of Disciplinary Counsel, by Rachael L. Fletcher Cipoletti, Chief Lwyer Disciplinary Counsel, pursuant to Rule 3.27, Rules of Lawyer Disciplinary Procedure, seeking the immediate suspension of the license to practice law in the State of West Virginia of the respondent, Richard A. Hayhurst.

Upon consideration whereof, the Court upon a finding of good cause, is of opinion to and doth hereby grant said petition. It is therefore ordered that the respondent's license to practice law in the State of West Virginia be, and it hereby is suspended, effective immediately.

The respondent is hereby notified of his right to request a hearing before the Court pursuant to Rule 3.27(c) of the Rules of Lawyer Disciplinary Procedure.

Service of an attested copy of this order shall constitute sufficient notice of the contents herein.

A True Copy

Attest:

  
Clerk, Supreme Court of Appeals

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

**NO. \_\_\_\_\_**

**OFFICE OF DISCIPLINARY COUNSEL,**

**Petitioner,**

**v.**

**RICHARD A. HAYHURST, a member  
of the West Virginia State Bar,**

**Respondent.**

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

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**NOW COMES** the Office of Disciplinary Counsel by Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, and reports to this Court that Respondent has been found guilty of felony crimes that reflect adversely on his honesty, trustworthiness, and fitness as a lawyer and are in direct violation of the Rules of Professional Conduct and he poses a substantial threat of irreparable harm to the public. *See Lawyer Disciplinary Board v. Albers, 214 W.Va. 11, 585 S.E.2d 11 (2003)*. Currently, Respondent has an active law license and Respondent continues to engage in the practice of law. Upon information and belief, pursuant to this conviction and the subsequent sentence imposed by the Federal Court, Respondent will be reporting to Federal Correction Institution on or about June 3, 2010.

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

**FACTS**

1. Richard A. Hayhurst, hereinafter Respondent, is a member of the West Virginia State Bar who practices in Parkersburg, West Virginia, and, as such, is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board. Respondent was admitted to the West Virginia State Bar on June 14, 1972.
2. On or about September 24, 2009, Respondent was named in a One Count Felony Information in the United States District Court for the Southern District of West Virginia, charging him with failing to account for and pay the Internal Revenue Service employment taxes totaling \$8,792.53, in violation of Title 26, United States Code, Section 7202.
3. On or about November 5, 2009, Respondent entered into a plea agreement to plead guilty to the Information.
4. Respondent stipulated that while engaged in the practice of law and the operation of his law firm in Parkersburg, West Virginia that in 2003 he withheld federal income and FICA taxes from four of his six employee's paychecks in the amount of \$8,792.53, but failed to pay the same to the Internal Revenue Service. Respondent filed IRS form 941 reflecting that he withheld and collected the same. Additionally, between 2000 and 2006, Respondent failed to pay taxes on behalf of the employees

of his law firm in the amount of \$216,767.00. Further, Respondent failed to pay the employer portion of his law firm's employees' Social Security and Medicare taxes from 2003 until 2006 totaling \$44,557.00. Finally, Respondent failed to pay his own personal income taxes from 2003 to 2005 totaling \$134,965.00 in unpaid tax liability.

5. On or about April 14, 2010, the United States District Court for the Southern District of West Virginia accepted Respondent's guilty plea and sentenced him to Twenty-One (21) months in the federal penitentiary. Respondent was also ordered to pay \$405,081.52, plus interest and penalties, in restitution to the Internal Revenue Service.
6. Respondent was ordered by the United States District Court for the Southern District of West Virginia to surrender himself to the United States Marshal Service.
7. Respondent has pled guilty to crimes involving moral turpitude and professional unfitness within the meaning of Rule 3.18 of the Rules of Lawyer Disciplinary Procedure.
8. Respondent has violated Rule 8.4(b) and Rule 8.4(c) of the Rules of Professional Conduct which state in pertinent part:

**Rule 8.4(b) Misconduct**

It is professional misconduct for a lawyer to:

- (b). Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

**Rule 8.4(c) Misconduct**

It is professional misconduct for a lawyer to:

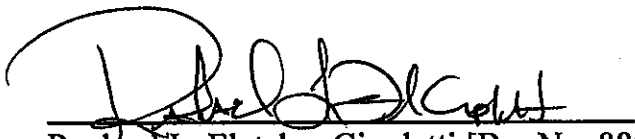
- (c). Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

9. On or about April 16, 2010, based upon the above-referenced facts, the Office of Disciplinary Counsel filed a petition pursuant to Rule 3.18 of the Rules of Lawyer Disciplinary Procedure seeking Respondent's annulment.
10. On or about May 17, 2010, Respondent by and through counsel filed a written request for a mitigation hearing pursuant to Rule 3.18 of the Rules of Lawyer Disciplinary Procedure.
11. No decision has been made by the Chair of the Hearing Panel of the Lawyer Disciplinary Board at present time.
12. It is probable that there will not be a final decision by the Supreme Court of Appeals on the prior petition before Respondent reports to FCI which again upon information and belief is on or about June 3, 2010.
13. "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).
14. 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.

15. 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).
16. 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.

**WHEREFORE**, the Office of Disciplinary Counsel requests that the Court temporarily, but immediately, suspend the license of Respondent until the completion of any subsequent disciplinary proceedings against him have been completed.

*Respectfully submitted,*  
Office of Disciplinary Counsel



Rachael L. Fletcher Cipoletti [Bar No. 8806]  
Chief Lawyer Disciplinary Counsel  
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Charleston, West Virginia 25311  
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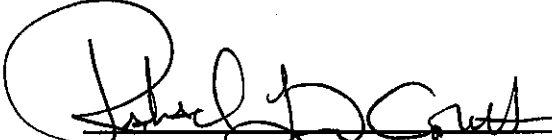
**CERTIFICATE OF SERVICE**

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This is to certify that I, **Rachael L. Fletcher Cipoletti**, Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 25<sup>th</sup> day of May, 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**" upon Robert P. Martin, Esquire, counsel for Respondent Richard A. Hayhurst, Esquire, by mailing the same, United States Mail with sufficient postage, to the following address:

Robert P. Martin, Esquire  
Post Office Box 3710  
Charleston, West Virginia 25337-3710

  
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Rachael L. Fletcher Cipoletti