

14-0349

**BEFORE THE LAWYER DISCIPLINARY BOARD  
STATE OF WEST VIRGINIA**

**In Re:** David S. Hart, a member of  
The West Virginia State Bar

**Bar No.:** 7976  
**I.D. No.:** 14-01-037

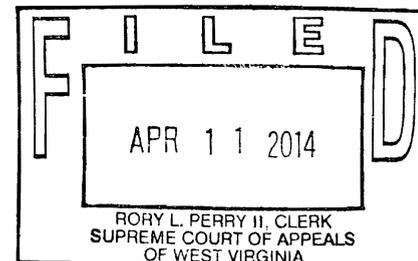
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**STATEMENT OF CHARGES**

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**To:** David S. Hart, Esquire  
Hayden & Hart PLLC  
102 McCreery Street  
Beckley, West Virginia 25801

**YOU ARE HEREBY** notified that a Hearing Panel Subcommittee of the Lawyer Disciplinary Board will hold a hearing pursuant to Rules 3.3 through 3.16 of the Rules of Disciplinary Procedure, upon the following charges against you:

1. David S. Hart (hereinafter "Respondent") is a lawyer practicing in Beckley, which is located in Raleigh County, West Virginia. Respondent was admitted to The West Virginia State Bar on September 29, 1999, by successful completion of the Bar examination. 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.

**COUNT I**  
**I.D. No. 14-01-037**  
**Complaint of Martin E. Durham**

2. Complainant Martin Durham filed a complaint against Respondent on or about January 23, 2014. Complainant stated that he spoke with Respondent on or about September 27, 2013, regarding a lawsuit he wanted to file against Bobby Shifflett and Briar Patch Gold Links, PLLC, resulting from an assault on Complainant by Mr. Shifflett, an employee of Briar Patch Gold Links, which occurred on or about November 11, 2009. Complainant stated that Respondent agreed to call him, but as of January 5, 2014, he had not done so. In addition, Complainant alleges that he later learned that Respondent appears to be friends with Mr. Shifflett on Facebook and Complainant believes that Respondent now has a conflict of interest. However, he does not know if Respondent ever filed anything on his behalf in this matter.
3. Complainant also alleged that Respondent had represented him in another matter, a civil case against Nationwide Insurance following an motor vehicle accident (Raleigh County Circuit Court Case number 09-C-1169-H). Complainant stated that this case settled for \$18,000.00. Respondent received \$6,000.00 and Complainant received \$5,955.00. The remaining money (\$4,154.04 according to Complainant) was to be paid to Advantra Freedom. Complainant contacted Advantra Freedom to confirm that they had received the money from Respondent, but was informed that Advantra was no longer in business. Complainant then contacted the Social Security Administration

and was told that he owed nothing. Thereafter, Complainant contacted Respondent about releasing the remaining money being held to him because Adventura Freedom was no longer in business and there were no other liens. When Respondent failed to respond, Complainant filed a civil suit (Raleigh County Magistrate Court Case number 13-C-292) against Respondent on or about April 8, 2013, “to acquire the monies that [Respondent] retained for Advantra Freedom.... On September 27, 2013, and [sic] order of dismissal was reached and [Respondent] presented a check to [Complainant] for the amount of \$4,154.04.”

4. By letter dated January 27, 2014, the Office of Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a response to the ethics complaint within twenty (20) days.
5. After receiving no response, on or about March 7, 2014, the Office of Disciplinary Counsel sent a second letter by certified and first class mail directing Respondent to file a response by March 21, 2014, and advising him that his failure to do so may result in a subpoena *duces tecum* being issued for his appearance at the Office of Disciplinary Counsel for a sworn statement, or the allegations in the complaint would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board. The Return Receipt indicated that this letter was delivered on or about March 10, 2014.
6. To date, Respondent has not responded.

7. Because Respondent failed to act with reasonable diligence in representing Complainant and in addressing Complainant's requests and concerns about these matters, he has violated Rule 1.3 of the Rules of Professional Conduct, which provides as follows:

**Rule 1.3. Diligence.**

A lawyer shall act with reasonable diligence and promptness in representing a client.

8. Because he failed to keep Complainant reasonably informed about the status of these matters and failed to promptly comply with his reasonable requests for information about these matters, Respondent has violated Rule 1.4(a) and Rule 1.4(b) of the Rules of Professional Conduct, which provide as follows:

**Rule 1.4. Communication.**

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

9. By failing to promptly deliver to either Adventura Freedom and/or Complainant money to which they were entitled, Respondent violated Rule 1.15(b) of the Rules of Professional Conduct, which states:

**Rule 1.15. Safekeeping property.**

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or

otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person shall promptly render a full accounting regarding such property.

10. Because he failed to comply with the Office of Disciplinary Counsel's lawful requests for information, Respondent has violated Rule 8.1(b) of the Rules of Professional Conduct, which provides as follows:

**Rule 8.1. Bar admission and disciplinary matters.**

[A] lawyer in connection with . . . a disciplinary matter, shall not:

\* \* \*

(b) . . . knowingly fail to respond to a lawful demand for information from . . . disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

**Aggravating Factors**

11. Respondent has exhibited a pattern and practice of misconduct by continuing to fail to respond to his clients's inquiries about their cases, failing to act diligently in representing his clients, and in failing to respond to the Office of Disciplinary Counsel.
12. On or about March 6, 2007, a Statement of Charges was filed against Respondent alleging violations of Rules 1.3, 1.4(a), 1.4(b), and 8.1(b) of the Rules of Professional Conduct. Moreover, the underlying charges in the March 6, 2007 Statement of Charges involved Respondent's failure to timely perfect an appeal of the denial of the

Complainant's Petition for Writ of *Habeas Corpus* after his March 30, 2003 appointment, failure to respond to the Complainant's inquiries about the status of the appeal, and then Respondent's failure to respond to the Office of Disciplinary Counsel after the complaint was filed against him in 2005. By Order of the Supreme Court of Appeals entered on September 13, 2007, Respondent was issued a reprimand was required to complete six (6) additional hours of continuing legal education during the 2006-2008 reporting year, and to pay the costs of the disciplinary proceeding. Respondent was also directed to file a Motion to Withdraw.<sup>1</sup> See, *Lawyer Disciplinary Board v. David S. Hart*, Supreme Court No. 33328.

13. Respondent is facing a second Statement of Charges (W.Va. Supreme Ct. No. 13-0748) filed on July 30, 2013, and which is currently pending at the Supreme Court of Appeals of West Virginia. The hearing in that matter was recently held on January 23, 2014. Disciplinary Counsel filed Proposed Findings of Fact, Conclusions of Law, and Recommended Sanctions on March 24, 2014. To date, Respondent has not filed his Proposed Findings of Fact, Conclusions of Law, and Recommended Sanctions. The allegations against Respondent in W.Va. Supreme Court No. 13-0748 included seven (7) counts and alleged multiple violations of lack of diligence (Rule 1.3); failure to respond to Complainants or otherwise communicate with them (Rules 1.4(a) and 1.4(b)); failure to expedite litigation consistent with the interests of his clients (Rule

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<sup>1</sup>The Order also included specific instructions to Respondent in the event his Motion to Withdraw was denied by the Circuit Court of Raleigh County.

3.2); and failure to respond to requests for information from Disciplinary Counsel (Rule 8.1(b).

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Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a violation of the Rules of Professional Conduct and has issued this Statement of Charges. As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 30 days of service of this Statement of Charges by the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

**STATEMENT OF CHARGES ORDERED** on the 31 day of MARCH, 2014,  
and **ISSUED** this 31st day of MARCH, 2014.



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**Charles J. Kaiser, Jr., Chairperson**  
Investigative Panel  
Lawyer Disciplinary Board