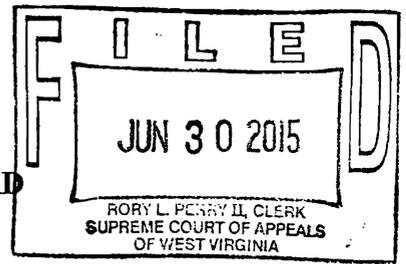


**BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**



In Re: Thorn H. Thorn,
a licensed member of
The West Virginia State Bar

Bar No.: 7346
Supreme Court No.: 14-0670
I.D. Nos.: 13-06-191, 13-02-230,
13-02-305, 13-05-384,
13-02-414, 13-02-417,
13-02-538, 13-02-542,
13-02-578, 14-02-058,
14-02-183

**DISCIPLINARY COUNSEL'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDED SANCTIONS**

I. PROCEDURAL HISTORY

Formal charges were filed against Respondent Thorn H. Thorn with the Clerk of the Supreme Court of Appeals on or about July 14, 2014, and served upon Respondent via certified mail by the Clerk on July 17, 2014. Disciplinary Counsel filed her mandatory discovery on or about August 7, 2014. Respondent filed his Answer to the Statement of Charges on or about September 25, 2014, after the deadline for filing was extended by the Office of Disciplinary Counsel pursuant to Rule 2.12 of the Rules of Lawyer Disciplinary Procedure. The hearing in this matter was first scheduled to take place on or about January 14, 2015. However, at the December 19, 2014, pre-hearing conference, the hearing was continued to February 17, 2015 upon a joint motion of the parties. Thereafter, on February 17, 2015, severe inclement weather conditions prevented travel to the hearing by members of the Office of Disciplinary Counsel, as well as several of its witnesses, and the matter was again continued without objection to April 8, 2015. Respondent provided his witness list on or about February 24, 2015.

This matter proceeded to hearing in Morgantown, West Virginia, on April 8, 2015, at the West Virginia University College of Law. The Hearing Panel Subcommittee was comprised of John W. Cooper, Esquire, Chairperson, Henry W. Morrow, Esquire, and Jon Blair Hunter, Layperson. Renée N. Frymyer, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Disciplinary Counsel. Respondent appeared *pro se*. The Hearing Panel Subcommittee heard testimony from Jessica D. Morris, Daniel N. Britton, Carly A. Wears, Mark D. Benkiel, Russell “Jack” Torsney, Jr., and Respondent. In addition, ODC Exhibits 1 through 83 were admitted into evidence.

Based upon the evidence and the record, the Office of Disciplinary Counsel submits to the Hearing Panel Subcommittee of the Lawyer Disciplinary Board the following Proposed Findings of Fact, Conclusions of Law and Recommended Sanctions regarding the final disposition of this matter.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Thorn H. Thorn (hereinafter “Respondent”) maintains a solo law practice in Morgantown, which is located in Monongalia County, West Virginia. Respondent was admitted to The West Virginia State Bar on April 23, 1997, after successful passage of the Bar Exam [Hearing Trans. p. 102]. As such, he is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

Count I Complaint of Debra Miller I. D. No. 13-06-191

2. Ms. Miller stated in her complaint, which was sworn and notarized on or about May 3, 2013, that she hired Respondent in October of 2011 for a probate matter and paid him Three Thousand Six Hundred Ninety Five Dollars (\$3,695.00) [ODC Ex. 1, bates 3].

3. Ms. Miller alleged in her complaint that Respondent failed to advance the case in the proper court and cancelled hearings that had been set [ODC Ex. 1, bates 1-2]. Ms. Miller also claimed in her complaint that Respondent was nonresponsive to her telephone messages [ODC Ex. 1, bates 12-13, 20].
4. Because after one (1) year the case had not progressed, on or about October 11, 2012, Ms. Miller sent Respondent an email in which she terminated Respondent's representation, requested an itemized bill, and asked Respondent to provide her with a refund of the unearned retainer [ODC Ex. 1, bates 10].
5. Ms. Miller stated in her complaint that Respondent had refused to return her file or provide her with a refund [ODC Ex. 1, bates 1-2].
6. In his response to the complaint, verified on or about July 12, 2013, Respondent denied he had violated the Rules of Professional Conduct and asserted that Ms. Miller's retainer was "mainly exhausted." Respondent asserted that he would send Ms. Miller the balance of her retainer, but Ms. Miller had refused to tell him where to send it [ODC Ex. 5, bates 35-37].
7. Thereafter, Ms. Miller contacted the Office of Disciplinary Counsel and advised that Respondent had not provided her with her file, despite her requests. By letter dated August 12, 2013, Disciplinary Counsel asked Respondent to provide Ms. Miller with her file on or before August 23, 2013 [ODC Ex. 6, bates 38].
8. By letter dated August 29, 2013, Respondent confirmed that he had forwarded a copy of the file to Ms. Miller at the address he had on file, but that it had been returned to sender. Respondent stated that he resubmitted the file to Ms. Miller at the Post Office Box address she listed on the ethics complaint [ODC Ex. 7, bates 41-43].

9. Ms. Miller subsequently informed Disciplinary Counsel that she had not yet received her file from Respondent [ODC Ex. 10, bates 46]. Disciplinary Counsel alerted Respondent of the same and, by letter dated October 1, 2013, Respondent informed Disciplinary Counsel that he had again mailed a copy of Ms. Miller's file to her at her Post Office Box address [ODC Ex. 11, bates 47].
10. At the disciplinary hearing, Respondent testified that he performed work on Ms. Miller's behalf, including filing what he contended was the appropriate pleading, a Petition to Remove, in the Marion County Circuit Court. Respondent acknowledged that Ms. Miller became dissatisfied when he had to continue the hearing in the matter on at least three (3) separate occasions due to scheduling conflicts and terminated his representation [Trans. pp. 132-135, 143-144].
11. Respondent testified that he could not recall if he had been responsive to Ms. Miller's inquiries circa August, 2012, to October, 2012, but that the likelihood was that he probably had not [Trans. p. 136].
12. Respondent testified that beginning in late 2012 he experienced problems with depression due to problems with his marriage, and the symptoms continued to persist throughout most of 2013 [Trans. p. 113].
13. Respondent referred to the depression during this time period as "debilitating." Respondent testified that he "had kind of just given up for a period of time to the sense that [he] had suicidal ideations and everything else for a period." [Trans. p. 114]
14. Respondent testified that he had been "pretty much solidly back on [his] feet," as of April, 2014, but that in late 2012 and early 2013, he "was just a mess," [Trans. p. 114]. Respondent

stated that it was not until the first or second quarter of 2014 that he felt like he wanted to continue what he was doing: “I want to continue being an attorney, I want to continue living. I want to continue being a father, I want to continue to, you know, be a person,” Respondent testified [Trans. p. 115].

15. Respondent testified that the majority of the complaints contained in the Statement of Charges filed against him concern the time period of late 2012, and 2013, and that, without question, he definitely had issues for that period [Trans pp. 118; 186]. “I wasn’t communicating with [clients],” Respondent stated [Trans. p. 120].
16. Respondent also testified that he was having issues with his answering service around the same time period [Trans. p. 141].
17. Respondent testified that he did not earn the full Three Thousand Six Hundred Ninety Five Dollar (\$3,695.00) fee that Ms. Miller had paid him [Trans. p. 147]. Respondent testified that he believed he still owed Ms. Miller a refund of approximately One Thousand One Hundred Dollars (\$1,100.00) [Trans. p. 147].
18. Respondent could not recall if he and Ms. Miller had entered into a written fee agreement [Trans. p. 147]. Respondent did not provide an itemization of his fee or an accounting of his time, but stated that his usual hourly rate was Two Hundred Dollars (\$200.00) [Trans. pp. 147-148].
19. Because Respondent neglected Ms. Miller’s case and failed to take appropriate action in the matter, he has violated Rule 1.3 of the Rules of Professional Conduct, which provides as follows:

Rule 1.3. Diligence.¹

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

20. Because Respondent failed to keep Ms. Miller informed as to the status of the matter and failed to respond to her requests for information, Respondent has violated Rule 1.4 of the Rules of Professional Conduct which provides 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.

21. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute and failed to make reasonable efforts consistent with the stated and agreed upon objectives of Ms. Miller, he has violated Rule 3.2 of the Rules of Professional Conduct which provides as follows:

Rule 3.2. Expediting litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

22. Because Respondent failed to promptly deliver to Ms. Miller the unearned portion of her retainer or render a full accounting regarding such property pursuant to her request, he has violated Rule 1.15(b) of the Rules of Professional Conduct, which provides as follows:

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

¹The instant Statement of Charges was issued prior to January 1, 2015. Therefore, the version of the Rules of Professional Conduct in effect prior to the January 1, 2015 amendments is used herein.

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.

23. Because Respondent failed to promptly return her file and the unearned fee paid to him by Ms. Miller, Respondent has violated Rule 1.16(d) of the Rules of Professional Conduct, which provides as follows:

Rule 1.16. Declining or terminating representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Count II
Complaint of Bonnie R. Hughes
I. D. No. 13-02-230

24. Ms. Hughes stated in her complaint, which was sworn and notarized on or about May 21, 2013, that she retained Respondent on or about February 28, 2013, for representation in a time-sensitive guardianship matter and paid him a retainer of One Thousand One Hundred Eighty Five Dollars (\$1,185.00) [ODC Ex. 16, bates 63-69].
25. Ms. Hughes' complaint stated that she subsequently called Respondent approximately three (3) times per week to obtain the status of the matter and left messages with Respondent's answering service when she was unable to reach Respondent [ODC Ex. 16, bates 69].
26. By May of 2013, Ms. Hughes claimed that Respondent had failed to take any action in the matter [ODC Ex. 16, bates 69].

27. Thereafter, by email dated May 13, 2013, Ms. Hughes terminated Respondent's representation and requested that Respondent issue her a refund of the retainer [ODC Ex. 16, bates 64]. Ms. Hughes' new counsel also sought to obtain a refund from Respondent on her behalf [ODC Ex. 20, bates 82-83].
28. In his response to the complaint, verified on or about July 19, 2013, Respondent denied he had violated the Rules of Professional Conduct but asserted that he would provide Ms. Hughes with a full refund [ODC Ex. 21, bates 84-86].
29. Ms. Hughes confirmed that she received a refund from Respondent in late July, 2013 [ODC Ex. 23, bates 88].
30. At the hearing, Respondent testified that it was possible that he failed to respond to Ms. Hughes' phone calls, as it was "in the right time frame." [Trans. p. 156]
31. Respondent also testified at the hearing that nothing happened in Ms. Hughes' case and, as a result, he provided her with a full refund [Trans. p. 156]. Respondent acknowledged that Ms. Hughes had been provided with a refund on or about July 12, 2013, which was after she had lodged an ethics complaint against him [Trans. pp. 157-158].
32. Because Respondent neglected Ms. Hughes' case and failed to take any action in the matter, 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.

33. Because Respondent failed to respond to the inquiries of Ms. Hughes, Respondent has violated Rule 1.4 of the Rules of Professional Conduct which provides 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.

34. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute and failed to make reasonable efforts consistent with the stated and agreed upon objectives of Ms. Hughes, he has violated Rule 3.2 of the Rules of Professional Conduct which provides as follows:

Rule 3.2. Expediting litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

35. Because Respondent failed to return the unearned fee paid to him by Ms. Hughes until after she filed an ethics complaint against him, Respondent has violated Rule 1.16(d) of the Rules of Professional Conduct, which provides as follows:

Rule 1.16. Declining or terminating representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Count III
Complaint of Jessica D. Morris
I. D. No. 13-02-305

36. Ms. Morris stated in her complaint, which was sworn and notarized on or about July 12, 2013, that she retained Respondent for representation in her divorce in October of 2011, that

Respondent subsequently filed the appropriate paperwork but otherwise failed to advance the case [ODC Ex. 26, bates 113-115].

37. Ms. Morris' complaint further alleged that many of her subsequent calls and emails to Respondent were not returned, that Respondent failed to provide Ms. Morris with a copy of the response that had been filed by the opposing party in the matter, and that Respondent failed to provide certain documents to opposing counsel and the Court [ODC Ex. 28, bates 124-126].
38. Thereafter, Ms. Morris sought legal representation from another lawyer and, by letter dated February 20, 2013, terminated Respondent's representation and requested that Respondent issue her a refund of the retainer and provide her with an itemization of accounting of all legal services that had been rendered [ODC Ex. 28, bates 124].
39. In his response to the complaint, verified on or about October 2, 2013, Respondent attributed the delays in the underlying matter to cancellations made by the Family Court and stated that he was in the midst of negotiations when he was informed by Ms. Morris that his services were terminated [ODC Ex. 30, bates 138-140].
40. At the hearing, Ms. Morris testified that multiple phone calls that were not returned by Respondent and emails to him went unanswered. Ms. Morris stated that Respondent "was not doing anything to help proceed [the case]." [Trans. pp. 8-9]
41. Ms. Morris testified that she began keeping a log of her attempts to communicate with Respondent due to her frustrations. She stated that the log reflected that from December 27, 2012, to February 6, 2013, she made multiple unsuccessful attempts to communicate with Respondent [ODC Ex. 28, bates 125; Trans. pp. 12-13].

42. Ms. Morris also testified that she was entitled to a refund from Respondent because she did not believe Respondent had earned the full retainer [Trans. pp. 15-16]. She could not, however, recall how much she paid Respondent [Trans. p. 23].
43. At the hearing, Respondent testified that he failed to communicate well with Ms. Morris [Trans. pp. 162; 186].
44. Respondent also testified that he probably did not respond to the letter of February 20, 2013, wherein Ms. Morris requested an itemized accounting of his services and a refund [Trans. pp. 186-187]. Respondent had previously contended that he charged Ms. Morris a “flat fee,” that was a “non-refundable, one-time payment.” [Trans. p. 17]
45. Respondent testified that he believed that he earned the full fee Ms. Morris paid him, which he estimated was Two Thousand Five Hundred Dollars (\$2,500.00) [Trans. p. 187]. Respondent did not, however, provide an accounting of his time or an itemization of his fee.
46. Respondent testified that the reason the case was pending from late 2011 to early 2013 was due to cancellations of hearings on the part of the Family Court of Marion County [Trans. pp. 162-163; 188].
47. Because Respondent neglected Ms. Morris’ case and failed to take appropriate action in the matter, 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.

48. Because Respondent failed to keep Ms. Morris informed as to the status of the matter and failed to respond to her requests for information, Respondent has violated Rule 1.4 of the Rules of Professional Conduct which provides 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.

49. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute and failed to make reasonable efforts consistent with the stated and agreed upon objectives of Ms. Morris, he has violated Rule 3.2 of the Rules of Professional Conduct which provides as follows:

Rule 3.2. Expediting litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

50. Because Respondent failed to promptly deliver to Ms. Morris the unearned portion of her retainer or render a full accounting regarding such property pursuant to her request, he has violated Rule 1.15(b) of the Rules of Professional Conduct, which provides as follows:

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.

51. Because the burden of proof is always upon the attorney to show the reasonableness of the fees charged,² and Respondent failed to present any records or evidence that he earned the

² See, Syllabus Point 2, Committee on Legal Ethics of West Virginia State Bar v. Tatterson, 177 W.Va. 356, 352 S.E.2d 107 (1986).

full fee paid to him by Ms. Morris, Respondent has violated Rule 1.16(d) of the Rules of Professional Conduct, which provides as follows:

Rule 1.16. Declining or terminating representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

**Count IV
Complaint of Todd H. Goodnight
I. D. No. 13-05-384**

52. Mr. Goodnight stated in his complaint, which was sworn and notarized on or about August 19, 2013, that Respondent was appointed to represent Mr. Goodnight in criminal matters and in an abuse and neglect proceeding in the Circuit Court of Marion County [ODC Ex. 33, bates 148-150].
53. Mr. Goodnight's complaint alleged that Respondent failed to appear for Court hearings that were scheduled in the abuse and neglect proceeding on February 4, 2013, March 8, 2013, and June 11, 2013, respectively [ODC Ex. 33, bates 150].
54. On June 13, 2013, the Circuit Court entered an Order which relieved Respondent of his representation of Mr. Goodnight and appointed Mr. Goodnight a new attorney in the abuse and neglect cases. The Order also noted that the State had advised the Court that Respondent had failed to appear for Multi-Disciplinary Team ("MDT") meetings in the preceding six (6) months and had not been responsive to telephone calls made to him to determine the status of Mr. Goodnight [ODC Ex. 33, bates 152-153].

55. Mr. Goodnight's complaint also alleged that Respondent was unresponsive to his inquiries [ODC Ex. 33, bates 149].
56. In his response to the complaint, verified on or about October 2, 2013, Respondent denied that the allegations raised in Mr. Goodnight's complaint affected the final disposition of either Mr. Goodnight's criminal cases or the abuse and neglect cases [ODC Ex. 36, bates 166-169].
57. At the hearing, Respondent did not dispute that he failed to attend some MDT meetings on behalf of Mr. Goodnight, who was incarcerated at the time [Trans. p. 190].
58. Respondent also testified that it was possible that he failed to respond to Mr. Goodnight's phone calls during the first half of 2013 [Trans. p. 195].
59. Because Respondent failed to appear for MDT meetings and hearings in the abuse and neglect matters on behalf of Mr. Goodnight, Respondent has violated Rules 1.1 and 1.3 of the Rules of Professional Conduct which provide as follows:

Rule 1.1. Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3. Diligence.

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

60. Because Respondent failed to keep Mr. Goodnight informed as to the status of the matter and failed to respond to his requests for information, Respondent has violated Rule 1.4 of the Rules of Professional Conduct which provides 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.

Count V
Complaint of Mark D. Benkiel
I. D. No. 13-02-414

61. Mr. Benkiel stated in his complaint, which was sworn and notarized on or about September 4, 2013, that he retained Respondent for representation relating to an automobile accident that occurred in the state of Pennsylvania on or about April 23, 2010, in which Mr. Benkiel suffered injury. Mr. Benkiel said that he and Respondent entered into signed a contingent-fee agreement with respect to the matter [ODC Ex. 43, bates 181-183].
62. Mr. Benkiel alleged that despite his phone calls and texts, Respondent failed to take any action in the case for three (3) years [ODC Ex. 43, bates 181-183].
63. Mr. Benkiel further alleged that Respondent failed to file the complaint on Mr. Benkiel's behalf before the statute of limitations expired on April 23, 2012. In fact, Mr. Benkiel stated that Respondent, who is not licensed in Pennsylvania, had advised him that Pennsylvania had a three (3) year statute of limitations period, and had provided Mr. Benkiel with a one (1) page complaint for him to file *pro se* in Allegheny County, Pennsylvania, on April 24, 2013. The Clerk did not accept Mr. Benkiel's complaint at that time due to it being barred by the statute of limitations [ODC Ex. 43, bates 181-183; Trans. pp. 87-88].
64. By letter dated September 11, 2013, the Office of Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a verified response within twenty (20) days [ODC Ex. 44, bates 190-191].

65. After not receiving any response from Respondent, by letter dated November 15, 2013, sent via certified mail, return receipt requested, Disciplinary Counsel requested that Respondent provide the requested response by Tuesday, November [26], 2013,³ or Respondent would be subpoenaed to appear at the Office of Disciplinary Counsel to give 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 [ODC Ex. 45, bates 192-194].
66. Respondent failed to provide a verified response to the complaint by the above-referenced deadline and, as a result, Respondent was issued a subpoena to appear at the Office of Disciplinary to give a sworn statement [ODC Ex. 46, bates 196]. However, on or about February 10, 2014, Disciplinary Counsel agreed to cancel the statement if Respondent provided a verified written response to Mr. Benkiel's complaint by February 28, 2014 [ODC Ex. 47, bates 200-201].
67. In his response to the complaint, verified on or about March 13, 2014, Respondent stated that the underlying matter involved pending litigation and he requested that he be permitted to respond to this complaint once the litigation had been resolved [ODC Ex. 48, bates 202-203].
68. At the hearing, Mr. Benkiel testified that, because he had grown up with Respondent, he called him for legal advice after he was involved in an automobile accident in Pennsylvania where another driver had been at fault and Mr. Benkiel sustained injury [Trans. pp. 82-83].
69. Mr. Benkiel also confirmed that he and Respondent entered into a written contingency-fee agreement shortly thereafter [Trans. pp. 83-84].

³ The letter contained a typographical error for the date as follows, "Tuesday, November 26 21, 2013, . . ."

70. Mr. Benkiel stated that he was not aware that Respondent was not licensed to practice law in Pennsylvania and that the case would have to be filed in that jurisdiction [Trans. p. 84].
71. Mr. Benkiel testified that he sought medical treatment, provided medical records and other information to Respondent, and he believed that Respondent “sent out various letters,” on Mr. Benkiel’s behalf [Trans. p. 85].
72. Mr. Benkiel said he was under the impression that the case would be filed in court at some point, and that he “. . . kept bugging [Respondent] and saying, hey, we’ve got to get this done.” [Trans. p. 86]
73. Mr. Benkiel testified that he ultimately learned that the statute of limitations had expired in the case and that there was nothing more he could do to pursue the matter [Trans. p. 88].
74. Mr. Benkiel was never able to pursue damages against the driver that caused that April 2010 accident [Trans. p. 89]. Mr. Benkiel testified that he still experienced some neck pain from the accident [Trans. p. 90].
75. Mr. Benkiel said he attempted to pursue damages from Respondent through counsel but abandoned his claim after learning that Respondent was filing for bankruptcy [Trans. pp. 90-91; ODC Ex. 43, bates 184-189].
76. In the course of negotiations regarding the professional negligence claim, Respondent offered an arrangement whereby he would “hire” Mr. Benkiel as a consultant for a fee of One Thousand Dollars (\$1,000.00) per month for a period of Twenty Four (24) months, and Mr. Benkiel’s sole job during that period would be “to keep his accusations confidential,” [ODC Ex. 43, bates 186]. Mr. Benkiel testified that he declined said offer from Respondent [Trans. pp. 92-93].

77. Respondent testified at hearing that Mr. Benkiel was aware that he was not licensed to practice law in Pennsylvania and that they would need to get counsel in Pennsylvania if the case proceeded to litigation [Trans. p. 197]. Respondent denied that he provided Mr. Benkiel with advice concerning the laws in Pennsylvania [Trans. p. 198].
78. Respondent acknowledged that he did not act with reasonable diligence and promptness during his representation of Mr. Benkiel because he missed the statute of limitations in the case [Trans. pp. 198-199].
79. Respondent testified that his recollection was that he was not able to quickly find a Pennsylvania lawyer to assist with the case, so the case “probably fell along the wayside,” [Trans. p. 200].
80. Respondent verified that he had made an offer to Mr. Benkiel, via Mr. Benkiel’s counsel, to pay him Twenty Four Thousand Dollars (\$24,000.00) in One Thousand Dollar (\$1,000.00) a month monthly payments [ODC Ex. 40, bates 186; Trans p. 200].
81. Respondent acknowledged that Mr. Benkiel had never filed a lawsuit against him alleging malpractice [Trans. pp. 200-201]. Respondent had testified earlier in the disciplinary hearing that he did not maintain malpractice insurance [Trans. p. 106].
82. Respondent stated that he filed for personal bankruptcy in late 2014 [Trans. p. 201].
83. Respondent said that he would be willing to make restitution to Mr. Benkiel and that he believed Twenty Four Thousand Dollars (\$24,000.00) to be a fair amount considering the facts of the case [Trans. p. 205].
84. Because Respondent incorrectly advised Mr. Benkiel as to the law in another jurisdiction and failed to take any action on Mr. Benkiel’s case before the statute of limitations expired,

Respondent has violated Rules 1.1 and 1.3 of the Rules of Professional Conduct which provide as follows:

Rule 1.1. Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3. Diligence.

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

85. Because Respondent failed to keep Mr. Benkiel informed as to the status of the matter and failed to respond to his requests for information, Respondent has violated Rule 1.4 of the Rules of Professional Conduct which provides 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.

86. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute and failed to make reasonable efforts consistent with the stated and agreed upon objectives of Mr. Benkiel, he has violated Rule 3.2 of the Rules of Professional Conduct which provides as follows:

Rule 3.2. Expediting litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

87. Because Respondent failed to comply with the Office of Disciplinary Counsel's lawful request for information, he 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.

**Count VI
Complaint of Daniel N. Britton
I. D. No. 13-02-417**

88. Mr. Britton stated in his complaint, which was sworn and notarized on or about August 30, 2013, that he retained Respondent on or about June 14, 2013, for representation in a Family Court matter and paid him a retainer of One Thousand Seven Hundred Dollars (\$1,700.00). The complaint further stated that the matter involved a request to modify a parenting plan in order to permit Mr. Britton's children to attend a different school [ODC Ex. 49, bates 204-208].
89. Mr. Britton alleged that despite his representation that the matter was time-sensitive, it took Respondent approximately five (5) weeks to file the necessary documents [ODC Ex. 49, bates 204-208; Trans. pp. 28-29].
90. Mr. Britton further alleged that Respondent was not responsive to Mr. Britton's calls of inquiry [Trans. pp. 29-30; 43].
91. Mr. Britton stated that Respondent finally obtained a court date of August 23, 2013, purportedly after Mr. Britton had contacted the Family Court of Preston County to ascertain the status of the matter and the Court's assistant notified Respondent of Mr. Britton's call to the Court [Trans. pp. 29-30; 43]. The hearing was later continued to the following week due to the vacation of opposing counsel [Trans. p. 38].

92. Mr. Britton testified at the hearing that he believed that the Court ultimately denied his request to modify the parenting plan because the hearing took place after the new school year began [Trans. p. 30].
93. Mr. Britton further testified that he believed that had Respondent filed the paperwork sooner, they could have obtained an earlier hearing date [Trans. p. 38].
94. Mr. Britton testified that he did not believe that Respondent had earned the full One Thousand Seven Hundred Dollars (\$1,700.00) he had been paid [Trans. p. 32].
95. By letter dated September 16, 2013, the Office of Disciplinary Counsel sent Respondent a copy of Mr. Britton's complaint and directed him to file a verified response within twenty (20) days [ODC Ex. 50, bates 209-210].
96. After not receiving any response from Respondent, by letter dated November 15, 2013, sent via certified mail, return receipt requested, Disciplinary Counsel requested that Respondent provide the requested response by Tuesday, November [26], 2013,⁴ or Respondent would be subpoenaed to appear at the Office of Disciplinary Counsel to give 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 [ODC Ex. 51, bates 211-212].
97. Respondent failed to provide a verified response to the complaint by the above-referenced deadline and, as a result, Respondent was issued a subpoena to appear at the Office of Disciplinary to give a sworn statement [ODC Ex. 52, bates 214]. However, on or about February 10, 2014, Disciplinary Counsel agreed to cancel the statement if Respondent

⁴ The letter contained a typographical error for the date as follows, "Tuesday, November 26 21, 2013, . . ."

provided a verified written response to Mr. Britton's complaint by February 28, 2014 [ODC Ex. 47, bates 200-201].

98. In his response to the complaint, verified on or about March 13, 2014, Respondent denied that the late-August hearing date was a factor in the Court's decision in the underlying case, citing to the fact that the children had been attending the same school for the previous two (2) years based upon an agreed parenting plan that was previously in place. Respondent also denied that he owed Mr. Britton any refund, citing to the work he performed on the matter [ODC Ex. 54, bates 220-222].
99. At the hearing, Respondent contended that Mr. Britton was charged a "flat fee," which was "non-refundable" [Trans. p. 36].
100. Respondent testified that he had communication and diligence issues with regard to his representation of Mr. Britton, but denied that those issues contributed to the result of Mr. Britton's case [Trans. p. 215].
101. Respondent further testified that he believed that he had earned his full fee from Mr. Britton [Trans. p. 216].
102. Respondent testified that the reason he had failed to timely file a response to Mr. Britton's complaint was that he "had pretty much given up for a period of time," and "wasn't interested in responding," [Trans. p. 219].
103. Respondent denied that the failure to respond to ethics complaints or other requests from the Office of Disciplinary Counsel was detrimental to the practice of law [Trans. p. 220].
104. Because Respondent failed to take prompt action with regard to Mr. Britton's case after being retained, 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.

105. Because Respondent failed to keep Mr. Britton informed as to the status of the matter and failed to respond to his requests for information, Respondent has violated Rule 1.4 of the Rules of Professional Conduct which provides 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.

106. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute and failed to make reasonable efforts consistent with the stated and agreed upon objectives of Mr. Britton, he has violated Rule 3.2 of the Rules of Professional Conduct which provides as follows:

Rule 3.2. Expediting litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

107. Because Respondent failed to comply with the Office of Disciplinary Counsel's lawful request for information, he 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.

**Count VII
Complaint of Martin H. Donovan
I. D. No. 13-02-538**

108. Mr. Donovan stated in his complaint, which was sworn and notarized on or about October 25, 2013, that he retained Respondent on or about November 17, 2011, for an expungement matter and paid him a retainer of Six Hundred Dollars (\$600.00) [ODC Ex. 55, bates 223-229].
109. Mr. Donovan's complaint stated that Respondent subsequently provided him with no updates in the matter [ODC Ex. 55, bates 227].
110. Mr. Donovan stated that on or about October 22, 2013, he contacted the Court to determine the status of the matter and learned that no expungement had ever been filed on his behalf [ODC Ex. 55, bates 227; ODC Ex. 58, bates 234].
111. By letter dated November 21, 2013, the Office of Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a verified response within twenty (20) days [ODC Ex. 56, bates 230-231].
112. After not receiving any response from Respondent, by letter dated February 12, 2014, Disciplinary Counsel advised Respondent that if a response was not received by February 28, 2014, such would be regarded as an admission of the allegations and subject Respondent to disciplinary action [ODC Ex. 57, bates 232-233].
113. In his response to the complaint, verified on or about March 13, 2014, Respondent acknowledged that he failed to complete the work he was paid to do by Mr. Donovan and that he would issue Mr. Donovan a full refund [ODC Ex. 59, bates 235-237].
114. At the hearing, Respondent testified that he never filed anything on behalf of Mr. Donovan and that he currently still owed him a refund [Trans. p. 223].
115. Respondent also testified that Mr. Donovan's funds were probably in his operating account, despite those funds being unearned [Trans. p. 226].

116. Because Respondent failed to take any action with regard to Mr. Donovan's case after being retained, 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.

117. Because Respondent failed to keep Mr. Donovan informed as to the status of the matter and failed to respond to his requests for information, Respondent has violated Rule 1.4 of the Rules of Professional Conduct which provides 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.

118. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute and failed to make reasonable efforts consistent with the stated and agreed upon objectives of Mr. Donovan, he has violated Rule 3.2 of the Rules of Professional Conduct which provides as follows:

Rule 3.2. Expediting litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

119. Because Respondent failed to promptly return unearned fee paid to him by Mr. Donovan, Respondent has violated Rule 1.16(d) of the Rules of Professional Conduct, which provides as follows:

Rule 1.16. Declining or terminating representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such

as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

120. Because Respondent failed to comply with the Office of Disciplinary Counsel's lawful request for information, he 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.

121. Because Respondent intentionally took and/or used Mr. Donovan's funds for his own personal use he has violated, Rule 8.4(c) and 8.4(d) of the Rules of Professional Conduct, which provide as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

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

(d) Engage in conduct that is prejudicial to the administration of justice.

**Count VIII
Complaint of Tony Bethea
I. D. No. 13-02-542**

122. Mr. Bethea stated in his complaint, which was sworn and notarized on or about November 18, 2013, that Respondent had been appointed by the Circuit Court of Monongalia County to file a *writ of habeas corpus* on his behalf [ODC Ex. 60, bates 238-243]. Court records indicated that Respondent was appointed on or about December 10, 2004 [ODC Ex. 64, bates 259].

123. Respondent was relieved as counsel by Order entered January 8, 2013, and Attorney Christopher Miller, Esquire, was appointed to represent Mr. Bethea in the matter [ODC Ex. 64, bates 260].
124. Mr. Bethea alleged in his complaint that despite several requests, Respondent had not turned over the files in his possession relating to Mr. Bethea's case to Mr. Miller [ODC Ex. 60, bates 238].
125. In his response to the complaint, verified on or about March 13, 2014, Respondent stated that Mr. Miller should have had access to the file at the Courthouse. Respondent further stated that he delivered everything in his possession relating to Mr. Bethea's case to Mr. Miller on March 13, 2014 [ODC Ex. 63, bates 248-250].
126. At the hearing, Respondent testified that he could recall specifics of when Mr. Bethea's counsel was provided with the files in Respondent's possession, but that his depression could have affected his ability to copy and turn over files during that time period [Trans. pp. 230-231].
127. Because Respondent neglected Mr. Bethea's case and failed to take any action in the matter, 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.

128. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute and failed to make reasonable efforts consistent with the stated and agreed upon objectives of Mr. Bethea, he has violated Rule 3.2 of the Rules of Professional Conduct which provides as follows:

Rule 3.2. Expediting litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

129. Because Respondent failed to promptly surrender papers and property to which the Mr. Bethea and his new counsel were entitled, Respondent has violated Rule 1.16(d) of the Rules of Professional Conduct, which provides as follows:

Rule 1.16. Declining or terminating representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

**Count IX
Complaint of Lisa A. Long
I. D. No. 13-02-578**

130. Ms. Long stated in her complaint, which was sworn and notarized on or about November 24, 2013, that in mid-2012, she and her husband paid Respondent to file a bankruptcy action on their behalf [ODC Ex. 65, bates 261-263].
131. Ms. Long's complaint stated that despite complying with all of Respondent's requests, Respondent had taken no action in the matter [ODC Ex. 65, bates 262].
132. Ms. Long also stated that Respondent had not returned her phone calls [ODC Ex. 65, bates 262].
133. In his response to the complaint, verified on or about March 13, 2014, Respondent attributed the delay in the case to scheduling issues [ODC Ex. 68, bates 268-270].

134. At the hearing, Respondent disputed that he had been unresponsive to Ms. Long's calls. He stated that his recollection was that Ms. Long had failed to bring him the documentation he needed to proceed with the case [Trans. pp. 232-234].
135. Respondent acknowledged that Ms. Long was entitled to a refund, although he was not certain of how much she had paid him. Respondent contended that the retainer remained in his operating account [Trans. pp. 233-234].
136. Because Respondent failed to take any action with regard to Ms. Long's case after being retained, 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.

137. Because Respondent failed to keep Ms. Long informed as to the status of the matter and failed to respond to her requests for information, Respondent has violated Rule 1.4 of the Rules of Professional Conduct which provides 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.

138. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute and failed to make reasonable efforts consistent with the stated and agreed upon objectives of Ms. Long, he has violated Rule 3.2 of the Rules of Professional Conduct which provides as follows:

Rule 3.2. Expediting litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

139. Because Respondent intentionally took and/or used Ms. Long's funds for his own personal use he has violated, Rule 8.4(c) and 8.4(d) of the Rules of Professional Conduct,⁵ which provide as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

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

(d) Engage in conduct that is prejudicial to the administration of justice.

Count X
Complaint of Carly A. Wears
I. D. No. 14-02-058

140. Ms. Wears stated in her complaint, which was sworn and notarized on or about January 27, 2014, that she retained Respondent in August of 2013 to represent her in a child custody matter and paid him a retainer of Two Thousand Five Hundred Dollars (\$2,500.00) [ODC Ex. 70, bates 274].
141. Ms. Wears' complaint alleged that from late August to October, 2013, Respondent was routinely nonresponsive to Ms. Wears' calls of inquiry and rarely provided her with updates in the matter [ODC Ex. 70, bates 272-276].
142. Ms. Wears stated that she visited Respondent's office on or about October 10, 2013, and noticed a copy of discovery responses Respondent had prepared for her case. Ms. Wears

⁵ The Statement of Charges filed in this matter did not contain this rule violation. The Barber Court found, however, that there was not a due process violation when the Hearing Panel found a violation of uncharged conduct when "it was related to or was within the scope of the conduct and rule violations specifically charged." Lawyer Disciplinary Board v. Barber, 211 W.Va. 358, 365, 566 S.E.2d 245, 252 (2002) *quoting* The Florida Bar v. Fredericks, 731 So.2d 1249 (Florida 1999).

observed that the Certificate of Service for the documents was for that same day, which was two (2) months past the deadline given in the Temporary Order entered by the Court in the matter for such [ODC Ex. 70, bates 275; Trans. pp. 53-55].

143. By letter dated October 23, 2013, Ms. Wears terminated Respondent's representation and requested that he return the remainder of her retainer in a timely manner [ODC Ex. 73, bates 287; Trans. pp. 59-60].
144. By letter dated November 27, 2013, Ms. Wears again requested a refund of her retainer from Respondent, along with a final bill and a copy of her file [ODC Ex. 73, bates 291; 293; Trans. p. 61].
145. Ms. Wears was provided with her file on or about December 10, 2013 [ODC Ex. 71, bates 278; Trans. p. 62].
146. By letter dated January 31, 2014, the Office of Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a verified response within twenty (20) days. This letter also notified Respondent that failed to respond may be regarded as an admission of the allegations and may form the basis for a Statement of Charges [ODC Ex. 76, bates 324-325].
147. Respondent failed to respond to Ms. Wears' complaint [Trans. p. 239].
148. At the hearing, Ms. Wears testified that communication with Respondent when she first hired him was, "really really awesome," but then it "slowed down to nonexistent," [Trans. p. 46]. Ms. Wears testified that communication was the biggest issue she had with Respondent [Trans. pp. 52; 62; 71; 77; ODC Ex. 74, bates 294].
149. Ms. Wears also testified that she never received a refund from Respondent or an itemization of his fee [Trans. pp. 56-57; 60].

150. Respondent stated on the record at the hearing that he would stipulate to communication issues during his representation of Ms. Wears and that at times he had been nonresponsive to her calls [Trans. p. 237].
151. Respondent denied that he missed discovery deadlines in the case and testified that he had an agreement with opposing counsel to extend discovery [Trans. p. 237].
152. Respondent contended that he earned the full fee paid to him by Ms. Wears, but did not provide any documentation concerning the time he expended in the matter [Trans. pp. 238-239].
153. Because Respondent failed to keep Ms. Wears informed as to the status of the matter, failed to respond to her requests for information, and failed to be available to explain to her important legal issues, Respondent has violated Rules 1.4 of the Rules of Professional Conduct which provides 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.

154. Because the burden of proof is always upon the attorney to show the reasonableness of the fees charged,⁶ and Respondent failed to present any records or evidence that he earned the full fee paid to him by Ms. Wears, Respondent has violated Rule 1.16(d) of the Rules of Professional Conduct, which provides as follows:

⁶ See, Syllabus Point 2, Committee on Legal Ethics of West Virginia State Bar v. Tatterson, 177 W.Va. 356, 352 S.E.2d 107 (1986).

Rule 1.16. Declining or terminating representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

155. Because Respondent failed to comply with the Office of Disciplinary Counsel's lawful request for information, he 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.

156. Because Respondent intentionally took and/or used Ms. Wears' funds for his own personal use he has violated, Rule 8.4(c) and 8.4(d) of the Rules of Professional Conduct, which provide as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
(d) Engage in conduct that is prejudicial to the administration of justice.

**Count XI
Complaint of the Office of Disciplinary Counsel
I. D. No. 14-02-183**

157. By letter dated February 28, 2014, Attorney Delby B. Pool advised Disciplinary Counsel of a Family Court matter involving her client, Amy Dovola, and Ms. Dovola's former husband, who was represented by Respondent [ODC Ex. 77, bates 326-335].

158. Ms. Pool stated that the underlying matter reached a settlement on October 30, 2013, which required Respondent's client to pay Six Thousand Five Hundred Dollars (\$6,500.00) to Ms. Dovola within sixty (60) days. Respondent also was to prepare the agreed order [ODC Ex. 77, bates 326].
159. Despite Mr. Dovola's representation to Ms. Pool and her client that the Six Thousand Five Hundred Dollars (\$6,500.00) had been timely sent to Respondent, Ms. Pool represented that Respondent had not forwarded any such funds to Ms. Pool's client [ODC Ex. 77, bates 326].
160. Bank records indicated that a check in the amount of Six Thousand Five Hundred Dollars (\$6,500.00), made out to Respondent by Michael Dovola, was deposited into Respondent's Client Trust Account on or about December 12, 2013 [ODC Ex. 80, bates 371].
161. Ms. Pool maintained that she sent Respondent several reminders to forward the funds to her client [ODC Ex. 77, bates 326].
162. On or about January 17, 2014, Ms. Pool filed a Motion for Sanctions in the matter, in which she alleged that Respondent had not tendered the funds to Ms. Dovola, nor had he tendered the agreed order to the Court [ODC Ex. 77, bates 326; 330-335].
163. On or about February 12, 2014, Respondent provided Ms. Pool with a check from his Client Trust Account made payable to Ms. Pool in the amount of Six Thousand Five Hundred Dollars (\$6,500.00) [ODC Ex. 77, bates 326; ODC Ex. 80, bates 364].
164. On or about February 18, 2014, Ms. Pool deposited the same in her IOLTA account and then disbursed the funds to her client the next day [ODC Ex. 77, bates 326].

165. On or about February 27, 2014, a copy of the check from Respondent was received in the mail by Ms. Pool from her bank marked, "NOT SUFFICIENT FUNDS" [ODC Ex. 77, bates 327; 333].
166. Ms. Pool notified Respondent of the bad check and advised Respondent to provide the funds to her immediately [ODC Ex. 77, bates 327].
167. By letter dated March 31, 2014, the Office of Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a verified response within twenty (20) days. This letter also notified Respondent that failed to respond may be regarded as an admission of the allegations and may form the basis for a Statement of Charges [ODC Ex. 78, bates 336-337].
168. Respondent failed to respond to the complaint [Trans. p. 248].
169. At the hearing, Respondent testified that during the end of 2013 he was not doing a good job of keeping track of his accounting or with putting money in the right accounts. He believed that the check he provided to Ms. Pool was returned due to the fact he provided a refund to another client before putting the money to cover such into the correct account [Trans. pp. 240; 244-246].
170. Respondent denied that he had misappropriated any client funds and acknowledged the seriousness of client trust account violations [Trans. pp. 245-247].
171. Respondent testified that he ultimately made a cash payment to Ms. Pool and she withdrew her request for sanctions [Trans. p. 240].
172. Because Respondent failed to promptly tender the agreed order to the Family Court and failed to promptly forward funds from his client to Ms. Dovola, Respondent 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.

173. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute and failed to make reasonable efforts consistent with the stated and agreed upon objectives of his client, he has violated Rule 3.2 of the Rules of Professional Conduct which provides as follows:

Rule 3.2. Expediting litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

174. Because Respondent failed to promptly deliver to Ms. Dovola funds to which she was entitled, he has violated Rule 1.15(b) of the Rules of Professional Conduct, which provides as follows:

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.

175. Because Respondent failed to file a verified response to this complaint and failed to comply with the Office of Disciplinary Counsel's lawful request for information, he 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.

176. Because Respondent intentionally took and/or used another party's funds for his own personal use he has violated, Rule 8.4(c) and 8.4(d) of the Rules of Professional Conduct, which provide as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

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

(d) Engage in conduct that is prejudicial to the administration of justice.

177. Russell "Jack" Torsney, Jr., an independently employed therapist, testified at the hearing that he has worked in the psychological business for thirty (30) years as a counselor. Mr. Torsney testified that he met with Respondent on one (1) occasion, on January 15, 2015, and that their meeting lasted for approximately two (2) hours. Mr. Torsney stated that based upon their conversation, he had the opinion that Respondent had experienced significant depression during the time periods discussed herein. Mr. Torsney cited to Respondent's isolation from others and his weight loss. Mr. Torsney believed that despite his opinion that Respondent currently maintained some symptoms of depression, that he had made progress and was currently fit to practice law. Mr. Torsney testified that Respondent's depression appeared more situational as opposed to clinical, that Respondent appeared to take responsibility for neglecting client matters, and that Respondent's goal moving forward was for these kinds of things not to happen. Mr. Torsney believed that it would be in Respondent's best interest to go forward with periodic counseling [Trans. pp. 165-185].

178. Respondent testified that with regard to overcoming his depression, he "just got out of it" [Trans. p. 120], and he currently did not believe he was depressed [Trans. p. 129].

Respondent also testified that he did not abuse alcohol or other drugs [Trans. p. 122], and he has since remarried [Trans. p. 130].

179. Rule 3.7 of the Rules of Lawyer Disciplinary Procedure provides that, in order to recommend the imposition of discipline of a lawyer, “the allegations of the formal charge must be proved by clear and convincing evidence.” *See also* Syllabus Point 2, Lawyer Disciplinary Board v. Cunningham, 195 W.Va. 27, 464 S.E.2d 181 (1995).
180. The factual findings and rule violations as set forth *supra* are fully supported by the record. The Office of Disciplinary Counsel has therefore proven all of the aforementioned violations of the Rules of Professional Conduct by clear and convincing evidence.

III. DISCUSSION

The Supreme Court of Appeals of West Virginia has long recognized that attorney disciplinary proceedings are not designed solely to punish the attorney, but also to protect the public, to reassure the public as to the reliability and integrity of attorneys, and to safeguard its interests in the administration of justice. Lawyer Disciplinary Board v. Taylor, 192 W.Va. 139, 451 S.E.2d 440 (1994). Factors to be considered in imposing appropriate sanctions are found in Rule 3.16 of the Rules of Lawyer Disciplinary Procedure. These factors consist of: (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer’s misconduct; and (4) the existence of any aggravating or mitigating factors. *See also*, Syllabus Point 4, Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d 722 (1998).

A. Respondent violated duties to his clients, to the public, to the legal system and to the legal profession.

It is without question that Respondent engaged in conduct in violation of the Rules of Professional Conduct and therefore violated duties to his clients, the public, the legal system and legal profession. The evidence clearly and convincingly demonstrates that Respondent committed multiple violations of the Rules of Professional Conduct, including: (1) failing to act with reasonable diligence and promptness in representing his clients; (2) failing to communicate with his clients; (3) failing to return client files or refund unearned fees in a timely fashion; (4) failing to respond to the requests of information from the Office of Disciplinary Counsel; and (5) engaging in conduct that was prejudicial to the administration of justice. In addition, Respondent acknowledged at the hearing that he had committed multiple violations of the Rules of Professional Conduct in the underlying matters.

Lawyers owe their clients duties of loyalty, communication, and diligence. The comment to Rule 1.4⁷ states that the client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued. The comment goes on to say, “The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client’s best interest, and the client’s overall requirements as to the character of representation.”

The Statement of Charges filed against Respondent consists of complaints from ten (10) different clients and one (1) complaint opened by the Office of Disciplinary Counsel. In regard to the complaints filed by Respondent’s former clients, all contained allegations that Respondent had

⁷Because the alleged conduct in the instant matters occurred prior to January 1, 2015, the version of the Rules of Professional Conduct in effect prior to the January 1, 2015 amendments will be used to analyze Respondent’s conduct.

fallen short of his duties to effectively communicate with them in their respective matters. Moreover, the record clearly reflects that Respondent continually failed his clients' expectations in the underlying matters by failing to communicate with them and by failing to diligently work on their cases.

Ms. Wears testified that it was "stressful" when she could not reach Respondent or have her questions answered [Trans. p. 48]. She testified that with Respondent as her counsel, she felt like she was left "kind of in the dark" [Trans. p. 73]. Ms. Morris testified regarding her repeated attempts at contacting Respondent, stating that it was "really frustrating," and resulted in "stress," and "annoyance" [Trans. pp. 12-14]. Respondent also failed to perform work for which he already had received a fee. Ms. Wears, Ms. Morris, Ms. Miller and Ms. Hughes were forced to obtain new counsel after no progress was being made in their respective cases, and all demanded refunds of their retainer fees. Respondent neglected to provide accountings for his work when asked and only complied with Ms. Hughes' request for a refund. In Mr. Donovan and Mr. Benkiel's cases, Respondent failed to perform any work for a significant period of time.

Respondent also violated his duties to the legal system and the legal profession. Many of Respondent's actions clearly negatively impacted his former clients' faith in other lawyers and the legal system. Mr. Britton testified that the experience, "puts a bad taste in his mouth towards, you know, lawyers" [Trans. p. 34]. Mr. Benkiel testified regarding a "distrust of the process," and that he had "less of a trust" among the legal profession [Trans. p. 93].

Finally, Respondent violated a duty to the legal system by failing to respond to the Office of Disciplinary Counsel. Respondent failed to file timely responses to the complaints of Mr. Britton, Mr. Donovan, and Ms. Long. Regarding the complaints of Ms. Wears and the Office of Disciplinary Counsel, Respondent failed to file any responses at all. Respondent's noncompliance with the Rules

of Professional Conduct is clearly detrimental to the legal system and profession, and his conduct has brought the legal system and legal profession into disrepute.

B. Respondent acted intentionally and knowingly.

There is no evidence to suggest that Respondent did not act intentionally or knowingly. Respondent acknowledged, for the most part, that he was aware of his clients attempts to contact him and that he had received the correspondence from the Office of Disciplinary Counsel asking him to respond to requests for information. Respondent also failed to perform legal work for his clients and intentionally retained unearned fees long after being discharged.

C. The amount of real injury is great.

Respondent created real injuries by failing to communicate with his clients and by failing to perform work in their cases. At the hearing, witnesses expressed how they were harmed by Respondent's conduct. In addition to describing intangible emotional injuries, each of the witnesses that testified believed that as a result of Respondent's misconduct, their trust and confidence in lawyers and the legal system had been affected. Moreover, the delays Respondent created in the underlying matters also created potential injury for all of the Complainants.

Furthermore, many of the Complainants continue to be owed refunds for fees that they paid to Respondent where Respondent failed to perform work. Respondent estimated that Ms. Miller continued to be entitled to a refund of One Thousand One Hundred Dollars (\$1,100.00) [Trans. p. 147]. Respondent clearly still owed Mr. Donovan a refund of Six Hundred Dollars (\$600.00) due to his failure to take any action in the matter after receiving payment. Respondent valued Mr. Benkiel's lost claim at a minimum of Twenty Five Thousand Dollars (\$25,000.00) [Trans. p. 205]. To date, Mr. Benkiel had not received any compensation for the injuries from his accident or from the damages resulting from Respondent's malpractice.

In addition, Respondent did not provide any documentation that he earned the full fees paid to him by Ms. Morris, Mr. Britton, Ms. Long, or Ms. Wears and, as a result, they also may be entitled to refunds. It is concerning that Respondent claimed he did not have knowledge of Legal Ethics Opinion 99-03 entitled “Non-Refundable Retainers,” in which the Lawyer Disciplinary Board advised that non-refundable agreements must be written, explained to the client, and meet the reasonableness test of Rule 1.5 of the Rules of Professional Conduct [ODC Ex. 83]. Respondent indicated that he was also not aware that even with regard to so-called non-refundable retainers and “flat fees,” the burden of proof was always upon the attorney to show the reasonableness of the fees charged, and, regardless of the fee structure, upon termination of representation Rule 1.16(d) required that the lawyer promptly refund any advance payment that has not been earned [Trans. pp. 148-149]. In many of the cases discussed herein, Respondent could not recall if he had communicated his fee to his clients in writing and provided no copies of fee agreements at the hearing.

The potential harm to the public, the legal system and the legal profession at the hands of Respondent is great. Because the legal profession is largely self-governing, it is vital that lawyers abide by the rules of substance and procedure which shape the legal system. Respondent’s noncompliance with these rules as exhibited in the record is clearly detrimental to the legal system and profession, and his conduct undermines the integrity and public confidence in the administration of justice.

D. There are aggravating factors present.

Aggravating factors are considerations enumerated under Rule 3.16 of the Rules of Lawyer Disciplinary Procedure for the Court to examine when considering the imposition of sanctions. Elaborating on this rule, the Scott Court held, “that aggravating factors in a lawyer disciplinary

proceeding ‘are any considerations, or factors that may justify an increase in the degree of discipline to be imposed.’” Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 216, 579 S.E. 2d 550, 557 (2003) quoting *ABA Model Standards for Imposing Lawyer Sanctions*, 9.21 (1992).

Rule 9.22(c) of the *ABA Model Standards for Imposing Lawyer Sanctions* indicates that a pattern of misconduct constitutes an aggravating factor. Respondent has exhibited a pattern and practice of misconduct by failing to communicate with his clients; failing to diligently pursue claims on behalf of clients; and failing to respond to requests for information from the Office of Disciplinary Counsel. This pattern and practice is exhibited in the cases as charged in this Statement of Charges. In addition, there can be no dispute that Respondent has committed multiple violations of the Rules of Professional Conduct in the underlying matters, which is another aggravating factor.

E. There are potential mitigating factors present.

In addition to adopting aggravating factors in Scott, the Scott Court also adopted mitigating factors in a lawyer disciplinary proceedings and stated that mitigating factors “are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.” Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 214, 579 S.E.2d 550, 555 (2003) quoting *ABA Model Standards for Imposing Lawyer Sanctions*, 9.31 (1992).⁸ The following mitigating factors are present: absence of a prior disciplinary record; full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and remorse. Respondent has been licensed to practice law

⁸The Scott Court held that mitigating factors which may be considered in determining the appropriate sanction to be imposed against a lawyer for violating the Rules of Professional Conduct include: (1) absence of a prior disciplinary record; (2) absence of a dishonest or selfish motive; (3) personal or emotional problems; (4) timely good faith effort to make restitution or to rectify consequences of misconduct; (5) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (6) inexperience in the practice of law; (7) character or reputation; (8) physical or mental disability or impairment; (9) delay in disciplinary proceedings; (10) interim rehabilitation; (11) imposition of other penalties or sanctions; (12) remorse; and (13) remoteness of prior offenses.

in West Virginia since April 23, 1997, and has no prior discipline from the Lawyer Disciplinary Board or the West Virginia Supreme Court of Appeals. Respondent also expressed remorse for his misconduct [Trans. p. 189].

Respondent asserts that he was suffering from depression during the time frame of these complaints, and presented the testimony of Mr. Torsney at the hearing, who met with Respondent once as supporting evidence. In Syllabus Point 3 of Lawyer Disciplinary Board v. Dues, 218 W.Va. 104, 624 S.E.2d 125 (2005), the Supreme Court of Appeals of West Virginia stated that “[i]n a lawyer disciplinary proceeding, a mental disability is considered mitigating when: (1) there is evidence that the attorney is affected by a mental disability; (2) the mental disability caused the misconduct; (3) the attorney’s recovery from the mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.” In this case, there is no clear and convincing evidence to establish that Respondent suffered any mental disability or that the alleged disability caused the misconduct because it appears that Respondent has never sought treatment. Likewise, Respondent’s cannot show that any recovery was demonstrated by a meaningful and sustained period of successful rehabilitation and no evidence was presented that the recovery arrested the misconduct and that recurrence of similar misconduct is unlikely.

The refund that Respondent provided in the Hughes matter should not mitigate any sanction, as the return of the unearned fees does not negate the conduct and is not a defense. *See* Syllabus Point 8, Lawyer Disciplinary Board v. Battistelli, 206 W.Va. 197, 523 S.E.2d 257 (1999); Syllabus Point 4, Committee on Legal Ethics v. Hess, 186 W.Va. 514, 413 S.E.2d 169 (1991).

IV. SANCTION

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syllabus Pt. 3, *in part*, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984), *cited in* Committee on Legal Ethics v. Morton, 186 W.Va. 43, 410 S.E.2d 279, 281 (1991). In addition, discipline must serve as both instruction on the standards for ethical conduct and as a deterrent against similar misconduct to other attorneys. In Syllabus Point 3 of Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987), the Court stated:

In deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession.

Indeed, attorney disciplinary proceedings are primarily designed 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. *See*, Syllabus Point 6, Committee on Legal Ethics v. Tatterson, 177 W.Va. 356, 352 S.E.2d 107 (1986); Syllabus Point 3, Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); Syllabus Point 2, In re Daniel, 153 W.Va. 839, 173 S.E.2d 153 (1970).

Rule 3.15 of the Rules of Lawyer Disciplinary Procedure provides that the following sanctions may be imposed in a disciplinary proceeding: (1) probation; (2) restitution; (3) limitation on the nature or extent of future practice; (4) supervised practice; (5) community service; (6) admonishment; (7) reprimand; (8) suspension; or (9) annulment. It is clear from the evidence and the record that Respondent has breached all four (4) of the Jordan factors. Based upon the conduct

discussed herein it is the position of Disciplinary Counsel that Respondent's license should be suspended.

Standard 4.42 of the *ABA Model Standards for Imposing Lawyer Sanctions* states that suspension is generally appropriate when a lawyer, “(a) knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect causes injury or potential injury to a client.” In Committee on Legal Ethics v. Mullins, the Supreme Court of Appeals of West Virginia stated that “[m]isconduct or malpractice consisting of negligence or inattention, in order to justify a suspension or annulment, must be such as to show the attorney to be unworthy of public confidence and an unfit or unsafe person to be entrusted with the duties of a member of the legal profession or to exercise its privileges.” Mullins, 159 W.Va. 647, 652, 226 S.E.2d 427, 430 (1976) (indefinite suspension for failure to act with reasonable diligence, failure to communicate effectively with clients, and failure to respond to the disciplinary authorities repeated requests for information, including failure to appear at the disciplinary hearing), *quoting* Syllabus No. 1, In Re Damron, 131 W.Va. 66, 45 S.E.2d 741 (1947). *See also*, Lawyer Disciplinary Board v. Rossi, 234 W.Va. 675, 769 S.E.2d 464 (2015) (three year suspension was warranted for attorney who failed to perform work and failed to cooperate with disciplinary investigation); Lawyer Disciplinary Board v. Aleshire, 230 W.Va. 70, 736 S.E.2d 70 (2012) (three year suspension for unresponsiveness to clients coupled with monetary damage); Lawyer Disciplinary Board v. Keenan, 189 W.Va. 37, 427 S.E.2d 471 (1993) (indefinite suspension for failure to provide competent representation, failure to act with reasonable diligence, failure to communicate effectively with his clients, and failure to return unearned fees); Lawyer Disciplinary Board v. Burgess, No. 23030 (WV 4/25/96) (unreported) (two year suspension with one year suspension deferred while respondent undergoes a one year

period of supervision following reinstatement for violations of Rules of Professional Conduct 1.1, 1.3, 1.4 (a) and (b), 1.16(a)(3), 1.16(d); 8.1(b); and 8.4 (c) and (d)).

Respondent's actions in these matters clearly rise to such a level to justify a strong sanction. This is not a case of simple negligence in communication and neglect of legal representation. Ten (10) separate clients asserted that Respondent was unresponsive to them, failed to take appropriate action on their cases, and caused them real injuries. Consideration must also be given to Respondent's apparent disregard of his duty to respond to lawful demands for information from disciplinary authority. This clearly exhibits a pattern and practice of a lack of concern for some of the fundamental aspects of the practice of law outlined in the Rules of Professional Conduct. Although Respondent has represented that he is now removed from the period of depression that resulted in these complaints, Disciplinary Counsel has serious concerns that Respondent is worthy of public confidence at this time and can be entrusted with the duties of a member of the legal profession or to exercise its privileges. A license to practice law is a revokable privilege and when such privilege is abused, the privilege should be revoked.

For the public to have confidence in our disciplinary and legal systems, lawyers who engage in the type of conduct exhibited by Respondent must be removed from the practice of law for some period of time. Such sanction is also necessary to deter other lawyers from engaging in similar conduct and to restore the faith of the victims in this case and of the general public in the integrity of the legal profession.

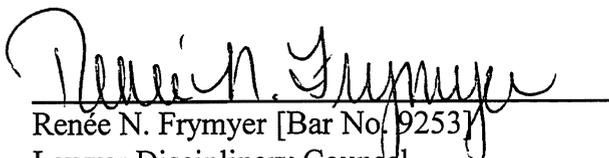
V. RECOMMENDED SANCTIONS

For the reasons set forth above, the Office of Disciplinary Counsel recommends the following sanctions:

- A. That Respondent's law license be suspended for a period of two (2) years;

- B. That prior to petitioning for reinstatement pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure, Respondent shall issue refunds to Debra Miller in the amount of One Thousand One Hundred Dollars (\$1,100.00), Martin Donovan in the amount of Six Hundred Dollars (\$600.00), and Mark Benkiel in the amount of Twenty Four Thousand Dollars (\$24,000.00), and provide proof thereof to the Office of Disciplinary Counsel;
- C. That prior to petitioning for reinstatement, Respondent must issue an itemized statement of account to Jessica Morris, Daniel Britton, Lisa Long, and Carly Wears, in addition to providing them with refunds where appropriate, and provide proof thereof to the Office of Disciplinary Counsel;
- D. That upon reinstatement, Respondent's practice shall be supervised for a period of one (1) year by an attorney agreed upon between the Office of Disciplinary Counsel and Respondent. The goal of the supervised practice will be to improve the quality and effectiveness of Respondent's law practice to the extent that Respondent's sanctioned behavior is unlikely to recur; and
- E. That Respondent be ordered to pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Respectfully submitted,
The Office of Disciplinary Counsel
By counsel


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CERTIFICATE OF SERVICE

This is to certify that I, Renée N. Frymyer, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 29th day of June, 2015, served a true copy of the foregoing **“DISCIPLINARY COUNSEL’S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED SANCTIONS”** upon Thorn H. Thorn, by mailing the same, United States Mail with sufficient postage, to the following address:

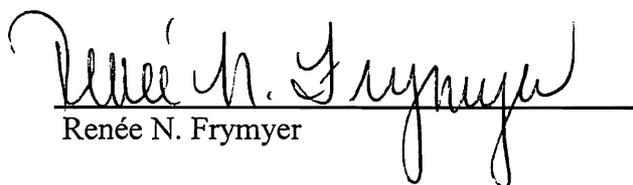
Thorn H. Thorn, Esquire
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And upon the Hearing Panel Subcommittee members at the following addresses:

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